TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 75.

I. M. DARNELL & SON COMPANY AND H. D. MINOR, PLAINTIFFS IN ERROR,

vs.

THE CITY OF MEMPHIS AND THOMAS J. TAYLOR, TRUSTEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED JULY 31, 1906.

(20,321.)

(20,321.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 75.

I. M. DARNELL & SON COMPANY AND H. D. MINOR, PLAINTIFFS IN ERROR,

vs.

THE CITY OF MEMPHIS AND THOMAS J. TAYLOR, TRUSTEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

INDEX.

	Original.	Print.
Transcript from the chancery court of Shelby county, Tennessee...	1	1
Original bill	1	1
Exhibit A—Tax bill	9	5
Cost bond	10	6
Order for writ of injunction	10	6
Injunction bond	10	7
Subpœna issued and returned	11	7
Injunction issued and returned	11	7
Order amending bill	11	7
Writ of injunction	12	8
Subpœna and return	13	8
Demurrer	13	9
Additional demurrer	15	10
Order overruling demurrer	16	11
Appeal allowed	16	11
Appeal bond	17	11
Bill of costs	18	12
Brief and assignment of errors of City of Memphis	19	12
Clerk's certificate	25	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 17, 1907.

	Original.	Print.
Brief and assignment of errors of City of Memphis	26	17
Brief for appellee	33	21
Decree	46	29
Amended decree	48	30
Petition for writ of error	49	31
Assignment of errors	50	32
Writ of error (copy)	53	33
Citation (copy)	55	35
Bond on writ of error	56	35
Clerk's certificate	57	36
Writ of error (original)	58	36
Citation (original)	61	38

1 In the Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, *Shelby County:*

Be it remembered, that — a term of the Chancery Court of Shelby county, State aforesaid, begun and held at the court house in the city of Memphis, in and for said county, on Monday, the 2nd day of October, 1905, the same being the first Monday in October, 1905, present and presiding the Hon. F. H. Heiskell, chancellor of said court, the following proceedings were had, to-wit:

Original Bill.

Filed January 30th, 1905.

In the Chancery Court of Shelby County, Tennessee.

#—, R. D.

I. M. DARNELL & SON COMPANY
vs.
THE CITY OF MEMPHIS and THOS. J. TAYLOR, Trustee.

Original Bill.

To the Hon. F. H. Heiskell, chancellor of said court:

Your complainant, I. M. Darnell & Son Company respectfully show-:

1. Complainant is now and has been for more than three years last past a corporation organized and existing under and by vir-
2 tue of the laws of Tennessee, with its domicile in the City of Memphis in Shelby County, Tennessee, that it now — and has been ever since its organization engaged in the business of manufacturing lumber and selling its manufactured product in said City; that the defendant, the City of Memphis, is a municipal corporation of Tennessee, in said County; that the defendant, Thos. J. Taylor, is, and has been since the — day of September, 1904, the County Trustee of said County and the officer charged with the collections and enforcement of all taxes (except license fees) due the said City.

2. The method pursued for the assessment of property for taxation by said City is declared by and Act of the General Assembly of Tennessee known as Chapter 366, published on pages 1097-1101 inclusive of the Acts of Tennessee for 1903, to which reference is now here made for the particular provisions thereof. By said Act, the office of City Tax Assessor is created, and it is made his duty to assess all property within the corporate limits of the said city for taxation. By the same Act the Legislative Council of said City is authorized and empowered to elect a Board of Equalization, to

consist of five freeholders and citizens of the city, whose duty it should be to revise the assessment made by the City Tax Assessor.

3. Acting under said Act—which was declared valid by the Supreme Court of Tennessee in an opinion rendered at its April Term, 1904, the said assessor, Geo. C. Chickazola by name, assessed complainant's property in said City and that assessment was received by the Board of Equalization which had been duly elected by the Legislative Council of said City; the said Board assessed complainant's personalty at the gross sum of $44,000.00. Of
3 this amount, $24,675.00 was represented by machinery and other personalty as to which no question is made in this suit. The remaining $19,325.00 was represented either by logs cut from the soil of States of the Union other than Tennessee and in the hands of complainant as the first vendee awaiting manufacture into lumber or lumber already manufactured by complainant from logs of the character just stated, and lying in complainant's mill yard awaiting sale. Complainant appeared before said Board and presented its contention that the personalty representing the $19,325.00 above mentioned was not subject to assessment or taxation—for the reason hereinafter set forth. Complainant had theretofore made the same claim to City Assessor who had conceded its correctness. But the said Board declined to recognize the claim of exemption made for the property last mentioned, to-wit, the — representing the said $19,325.00, and assessed the same for taxation equally with the remainder of complainant's personalty, and duly certified such assessment to the proper officer for the collection of the tax.

4. Complainant visited the office of the defendant Taylor, who was then, and is now, the officer charged with the collection of all taxes due said City, and offered to pay taxes on the property representing the $24,675.00 above mentioned but declined to pay the taxes claimed for the remaining property. The deputy in said Taylor's office thereupon received from complainant $380.00 same being the taxes on said $24,675.00 as will appear from a receipt a copy of which is made exhibit "A" hereto but not to be copied. Said receipt also shows a payment of an additional $18.48 as the tax due on a piece or realty making a total paid of $398.48. Said deputy
4 thereupon marked on said receipt "Balance of Personalty $19,325.00 in Litigation." Afterwards, the claim having been made by the City's representative that the deputy acted without authority in accepting any sum less than the full amount of taxes due on the whole assessment, said sum of $398.48 was handed back to complainant by the City's representative. Whereupon, complainant again tendered to the said Taylor the said sum of $398.48 as the tax due on the $24,675.00 of personalty above mentioned and upon the realty mentioned in said receipt but he declined to receive same unless the additional sum of $297.60, claimed as the tax due on the $19,325.00 of personalty heretofore mentioned, was also paid. Complainant, at the time, again claimed its exemption as hereinafter set forth, but the said Taylor refused to recognize same; and complainant thereupon announced its inten-

tion to file this bill and to tender the said sum of $398.48 into Court with the bill—which it now accordingly does.

5. Complainant now avers that by the Constitution of the State of Tennessee, ratified and adopted March 26th, 1870, it is provided:—

All property, real, personal, or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by Counties, Cities, or towns, and used exclusively for public or corporation purposes, and such as may be held or used for purposes purely religious, charitable, scientific, literary, or educational, and shall except one thousand dollars' worth of personal property in the hands of each tax payer, and the direct product of the soil in the hands of the producer, and his immediate vendee." Art. 11, sec. 28.

"SEC. 30. No article manufactured of the product of this State shall be taxed otherwise than to pay inspection fees."

The Supreme Court of Tennessee has held that "so far as these provisions relate to the direct product of the soil, in the hands of the producer and his immediate vendee, and to articles manufactured of the product of this State, they are mandatory and self executing;" that the term "produce of the State" is "intended to embrace whatever is produced or grown in the State, or is the yield of the State, whether it be crops, or timber, or coal, or iron, or marble, or wood, or any other article which may be treated as produced or grown within the State from or on the soil."

6. The General Assembly of Tennessee by an Act passed April 9, 1903, and approved April 16, 1903, same being Chapter 253 of the Acts of said Assembly of 1903, and contained in the published Acts of that year on page- 599-708 inclusive, same being "An Act to Provide Revenue for the State of Tennessee, and the Counties and Municipalities thereof" provide- for a recognition of the constitutional exemption just mentioned, expressly enacting that "the value of articles manufactured from products of the State in the hands of the manufacturer shall be deducted in assessing the property" and that "in case of manufacturers, the value of the article manufactured from the product of the State in the hands of the manufacturer shall, in making the assessment, be deducted." These provisions are to be found in section 23 of said Article page 649 of said published Acts.

7. At the time of said assessment above mentioned as made by said Board and for the period of time which said assessment was intended to embrace, complainant was a manufacturer of lumber as above stated, owning and operating a lumber mill in said City. No portion of the tax here in controversy as above set out is for inspection fees but same was assessed and is now claimed by said City and its officers as an ad valorem tax on personalty.

8. Complainant is advised and does believe that under and by virtue of the Constitution of the United States, particularly that portion thereof, to-wit, Article 1, section 8, giving to Congress the power to regulate commerce with foreign nations and among the several States, and that portion, to-wit, Article XIV of the Amendments denying the right to any State to deny to any person within its

jurisdiction the equal protection of its laws, the assessment
6 for taxation of the personalty representing the $19,325.00 hereinbefore mentioned—the same being personalty which should be expressly exempt under the Constitution and laws of Tennessee had it come from the soil of Tennessee instead of from the soil of a sister State—is unlawful and wholly invalid; that it constitutes and unlawful discrimination in favor of the products of the soil of Tennessee and articles manufactured from the produce of Tennessee and against products or produce of other states of the Union.

9. Complainant further avers that under the laws of Tennessee it is made the duty of the said Trustee, Thos. J. Taylor, upon the failure of any person to pay the tax assessed against personalty, to proceed to enforce the payment of the same by distress and sale of the delinquent's property; that the defendant is threatening to enforce the payment of the tax assessed against complainant as above stated by distress and sale of complainant's property unless the entire tax above mentioned as demanded by said City and its Trustee, Taylor, is immediately paid; that such a proceeding would work an irreparable injury to complainant; that the said Taylor will, unless he is restrained by process from this Honorable Court, proceed to distrain and sell as above mentioned to complainant's great and irreparable injury. And complainant is advised and believes that he is entitled to an injunction restraining said Taylor from so distraining and selling and from otherwise insisting upon the payment by complainant of the tax assessed against the personalty above mentioned as representing the $19,325.00. Complainant has no adequate remedy at law. The said sum of $18.48 claimed as the tax on the realty mentioned in said receipt constitutes a lien upon the said real estate belonging to complainant. Complainant
is willing and has always been willing, to pay this sum of
7 $18.48 and has tendered the same hereinbefore set out but same has been refused, wherefore complainant now tenders it with this bill—same being included in the said sum of $398.48 here tendered.

10. Complainant now comes and tenders into Court the said sum of $380.00 above mentioned as being the tax which it admits to be due by it to said City—the same having been heretofore tendered to said Taylor, the duly authorized officer of the said city for the collection of said tax and refused by said Taylor as above stated and pays the same into Court simultaneously with the filing of this bill.

11. Premises considered, Complainant prays that the parties named as defendants in the caption of this bill and hereinbefore described be made defendants hereto and that proper process issue requiring them to appear and answer this bill at the next rule day but not under oath, the oaths to the answers of said defendants being here expressly waived.

That a preliminary injunction issue at once enjoining and restraining the defendants, their officers and deputies, from further

attempting to enforce the payment of the tax on the property hereinbefore described as representing in said assessment the $19,325.00 above mentioned.

That, upon final hearing of this cause, such injunction be made permanent and the defendant, their successors, officers and deputies be forever restrained and enjoined from enforcing or attempting in any way to enforce the payment of the illegal tax hereinbefore mentioned.

That your Honor will — all such other, further and general relief as the premises or proof may warrant or equity require. This is the first application for an injunction or other extraordinary relief in this cause.

C. H. TRIMBLE,
METCALF, MINOR & METCALF,
H. B. ANDERSON,
Sol's for Compl't.

8 STATE OF TENNESSEE, *County of Shelby:*

W. S. Darnell having been first duly sworn, deposes and says that he is and has been for some time the Secretary and Treasurer of the I. M. Darnell & Son Company, the complainant, that he is familiar with the matter referred to in the foregoing bill, has read the said bill, and that the facts stated therein are true, save those stated as on information and belief and those he is informed and believes are true.

W. S. DARNELL.

Sworn to and subscribed to before me on this the 30th day of January, A. D. 1905.

[SEAL.] C. W. METCALF, JR.,
Notary Public.

9 EXHIBIT A.

Bill No. 169. 12th Ward. Page 6, Line 8.

MEMPHIS, SHELBY CO., TENN., 12/13/01.

STATE OF TENNESSEE
vs.
DARNELL, I. M., & SON.

To City of Memphis for Taxes, 1904.

Original lot.	Country lot.	Block.	Acres.	Valuation.
13	.....	148 x 215 ft. E. S. Ninth St.....		$1200.
14	.....	Elrod Subd.		
		Personalty		24675.
				25875.

General Tax	$1.21	on the $100
Special Improvement	.20	" " "
Special Park	.10	" " "
Total City Rate	1.51	" " "
State Levy for Cossitt Library	.03	" " "
Total Rate	$1.54	" " "

398.48

1904.

	Interest
See back of this receipt.	Penalty
	Commission
	Total

Received payment of —— ——.

(Signed) T. J. TAYLOR,
County Trustee.
J. M. HALL,
Deputy Trustee.

(On back :)

Taxpayers are requested to examine their tax bills and see that receipts cover all property upon which they desire to pay. The Trustee cannot tell from the tax book the ownership of property, and is in no way responsible for omission unless taxpayers furnish description of all property upon which they wish to pay.

10 *Cost Bond.*

We, I. M. Darnell & Son Company, as principal and W. S. Darnell as surety, acknowledge ourselves indebted to the City of Memphis and Thos. J. Taylor, Trustee, *Trustee,* in the sum of Two Hundred and Fifty Dollars ($250.00), to be void if the said I. M. Darnell & Son Company, complainants in the bill which has this day been filed in the Chancery Court of Shelby County against the said City of Memphis and Thos. J. Taylor, Trustee, shall pay all such costs as may be awarded against it by the Court in its decree and orders in said cause.

This 20th day of Jan'y, A. D., 1905.

I. M. DARNELL & SON COMPANY.
W. S. DARNELL.
W. T. DARNELL.

The Clerk & Master will issue writ of injunction as prayed for in foregoing bill upon complainant giving bond and security in the Sum of Five Hundred Dollars.

This Feb. 18th 1905.

J. S. GALLOWAY, *Judge.*

Injunction Bond.

We, I. M. Darnell & Son Company as principal and H. D. Minor as surety, acknowledge ourselves indebted to City of Memphis and T. J. Taylor, Trustee, in the sum of Five Hundred Dollars.

The condition of the above bond is such, that whereas the said I. M. Darnell & Son Company Complainant has this day filed their Bill in the Chancery Court of Shelby County against the said City of Memphis *et al.* Defendant and obtained *and obtained* an order for the issuance of the Writ of Injunction, in accordance with said order, upon the execution of the bond.

Now, if the said complainant shall pay such cost and damages as may be awarded by the Chancery Court in dismissing the
11 bill, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seal this the 18th day of February, 1905.

I. M. DARNELL & SON COMPANY.
By H. D. MINOR, *Sol.*
H. D. MINOR, *Surety.*

Subpœna to answer and copy bill issued Feb. 3, 1905, returnable to March Rules 1905, executed on City of Memphis by rendering subpœna to J. J. Williams Mayor and leaving copy of Bill with him and also executed on T. J. Taylor, Trustee.

Injunction issued Feb. 18th 1905 and executed same day on City of Memphis and T. J. Taylor, Trustee.

In the Chancery Court of Shelby County, Tennessee.

#13296, R. D.

I. M. DARNELL & SON COMPANY
vs.
CITY OF MEMPHIS ET AL.

Order Amending Bill.

Entered May 24, 1905.

In this cause, on application of the complainant it is ordered that leave be and it is hereby given to complainant to amend the second paragraph of the prayer of its original bill herein by striking therefrom the last word of same to-wit, "as representing in said assessment the $19,325.00 above mentioned." And it is accordingly ordered and adjudged that said bill *be* stand amended by the striking out of the prayer of the words just quoted.

And on further application of the complainant, it is further ordered that the injunction hereinbefore issued in accordance
12 with the second paragraph of the prayer of said bill be modified so as to accord with said prayer as above amended. Ac-

cordingly it is now ordered that the Clerk & Master will issue a new writ of injunction, upon the injunction bond already given herein, in accordance with the second paragraph of the prayer of said bill as amended hereby.

Injunction.

Issued 24th day of May, 1905.

To City of Memphis and Thos. J. Taylor, Trustee, Agents & Attorneys, Greeting:

Whereas, I. M. Darnell & Son Co., hath lated exhibited their bill of complainant in the Chancery Court of Shelby County against you, the said City of Memphis and Thos. J. Taylor County Trustee as defendant therein, and obtained from the Hon. F. H. Heiskell, Judge &c., an order that writ of injunction do issue according to the prayer of said bill.

We therefore, in consideration of the premises do strictly enjoin and command you the said City of Memphis, Thos. J. Taylor, County Trustee, agents, deputies and attorneys and all and every person before mentioned, and each and every of you, that you and every of you, do absolutely desist and refrain from further attempting to enforce the payment of the tax on the property described in the original bill as follows: 1 lot of land 148 x 215 feet east side of Ninth Street Elrod Subd., in the City of Memphis, 12th ward thereof and the personalty described in the bill No. 169—12th ward of the books in said Trustee's office showing the City tax 1904. until the further order of the Court to the contrary. And this you shall in no wise omit, under the penalty prescribed by law. Witness, Thomas B. Caldwell C. & M. of said Chancery Court at Office in the City of Memphis, this the first Monday in April, 1905.

T. B. CALDWELL, *C. & M.*
W. M. COX, *D. C. & M.*

13 *Sheriff's Return.*

Came to hand 25th day of May 1905, Executed on City of Memphis by reading writ to J. J. Williams Mayor; further executed by reading to Thos. J. Taylor, Trustee, May 25th, 1905.

F. L. MONTEVERDE, *Sheriff.*
F. E. MILLER,
Deputy Sheriff.

Subpœna to Answer Amended Bill.

Issued May 24th, 1905.

The State of Tennessee to the Sheriff of Shelby County:

Summons City of Memphis and Thos. J. Taylor, if to be found in your County, to appear before the Chancery Court of Shelby County,

at the Court House in Memphis, Tennessee, on the first Monday in July next, then and there to answer the amendment to Bill of Complainant of I. M. Darnell & Son Co., a copy of which accompanies this writ. Herein fail not, and have you then and there this writ. Witness T. B. Caldwell, Clerk & Master of said Court, at office in Memphis this First Monday in April, 1905.

T. B. CALDWELL, *C. & M.*
By W. M. COX, *D. C. & M.*

Sheriff's Return.

Come to hand 25th day of May, 1905. Executed on City of Memphis by reading to J. J. Williams, Mayor leaving copy of bill with him and by reading to Thos. J. Taylor, Trustee. May 25th, 1905.

F. L. MONTEVERDE, *Sheriff.*
F. E. MILLER, *D. S.*

Demurrer.

Filed Oct. 5th, 1905.

I. M. DARNELL & SON COMPANY, Complainant,
vs.
CITY OF MEMPHIS and THOS. J. TAYLOR, Trustee, Defendant.

14 The defendant avers that the bill and the matter therein contained are insufficient in law to maintain this action, and the- demur to said bill on the following grounds:

I. The assessment for taxation therein complained of is not unlawful and wholly invalid, because it is not unlawful discrimination on the part of the State of Tennessee, against sister states in that it does not violate any part of the Constitution of the United States.

II. Said assessment does not violate Article 1, section VIII. of the Constitution of the United States, giving to Congress the power to regulate commerce with Foreign nations, and among the several states.

III. The said assessment complained of herein does not violate Article XIV. of the Constitution of the United States denying the right to any State to deny to any person within its jurisdiction the equal protection of the laws.

IV. Said assessment does not violate any portion of the Constitution of the State of Tennessee.

V. Said Assessment does not violate any Act of the State of Tennessee, pas*t* April 9th, 1903, and approved April 16th, 1903, same being Chapter 257 of the Acts of said Assembly of 1903, and contained in the published Acts of that year on pages 599 to 708 inclusive, same being, "An Act to provide revenue for the State of Tennessee and the Counties and municipalities thereof." This Act does not violate the Constitution of the State of Tennessee nor the Constitution of the United States.

VI. Defendant avers that complainant's bill is insufficient in law because it admits that all, or part of said logs have been converted into lumber.

H. F. WALSH,
WM. R. HARRISON,
Attorneys for Defendant.

Filed Oct. 5th, 1905.

15 *Demurrer.*

Filed January 8th, 1906.

I. M. DARNELL & SON COMPANY
vs.
THE CITY OF MEMPHIS ET AL.

By leave of Court first had and by consent of all parties hereto, the Defendant files the following additional grounds of Demurrer to the bill in this cause.

I. The bill on its face shows that the complainant is a citizen of Tennessee and it does not belong to that class of persons that can claim the benefit of Section 2 of Article 4 of the Constitution of the United States. Nor does it come within the protection of the 14th amendment of said Constitution.

II. The bill shows that the complainant is a corporation and is therefore not within the provisions of those sections of the Federal Constitution above mentioned.

III. That complainant being a Tennessee corporation and engaged in business in the State of Tennessee and entitled to the exceptions under the constitution and statute laws of Tennessee, cannot invoke the protection of said provisions of the Federal Constitution for the reason it has no cause to complain.

IV. Said provisions of the Federal Constitution and Amendments apply to citizens of other states than Tennessee. A citizen of Tennessee cannot complain.

V. The bill does not allege that the property sought to be assessed, or taxed was in transit, or that it was awaiting shipment out of the State, but on the contrary it shows that said property had reached its destination, was in the hands of the consignee and owner, who was a citizen of Tennessee and had become a part of the general
16 property in the State. The assessing the same for taxation was not an interference with interstate commerce between the States.

THOS. H. JACKSON,
Solicitor for Defendant.

Order Overruling Demurrer and Appeal.

Entered Jan'y 29th, 1906.

#13286, R. D.

I. M. DARNELL & SON COMPANY
vs.
CITY OF MEMPHIS ET AL.

Decree.

This cause came on this day to be heard on the original bill of the complainant and the demurrer filed Nov. — 1905, and was argued by Counsel. And the same having been by the Court considered, it is ordered and adjudged that said demurrer be and is hereby overruled, the Court being of the opinion, and so holding that the tax in controversy is in contravention of the rights of the complainant as guaranteed by the Constitution of the United States, particularly the interstate commerce clause thereof, and the Fourteenth Amendment thereof, as set out in complainant's original bill.

From all the foregoing, said defendant prays an appeal to the next term of the Supreme Court of Tennessee to be held at Jackson, Tennessee, on the first Monday in April, A. D. 1906, which Appeal is granted upon said defendant executing bond with security as required by law.

17 *Appeal Bond.*

Filed January 30th, 1906.

We, City of Memphis, appellant and surety Thos. H. Jackson, acknowledge ourselves indebted to I. M. Darnell & Son Company appellee, in the Sum of Two Hundred & Fifty Dollars.

To be void if the said City of Memphis, above named as appellant, who has prayed for an- obtained an appeal from the decree of the Chancery Court of Shelby County, in a cause in which I. M. Darnell & Son Company is complainant and City of Memphis, *et al.*, defendants, to the next term of the Supreme Court of Tennessee for the District of West Tennessee, to — held at Jackson Madison County, on the first Monday in April next, shall pay all such costs as shall be awarded against it by said Supreme Court.

This 30th day of January, 1906.

CITY OF MEMPHIS, [SEAL.]
By THOS. H. JACKSON, *Att'y.* [SEAL.]
THOS. H. JACKSON, *Surety.* [SEAL.]

18 Chancery Court of Shelby County.

No. 13296.

I. M. DARNELL
vs.
CITY OF MEMPHIS ET AL.

Bill of Costs.

State tax	$2.50
County tax	2.50

T. B. Caldwell, C. & M.:

Filing Bill	.25	Judgment for costs	.25
Affidavits	.25	Demurrers	.50
Bonds	1.75	Bill of costs	.50
Amended Bills	.25	2 spas. to ans	1.50
Affidavits	.25	Notices	.50
Final Decree	.50	Order for ex	.25
Set on H. Docket	.30	2 copies of bills	3.00
Motions	.25	2 injunctions	2.00
Orders & decrees	.50	Appeal & bond	.75
Proconfesso	.50	Transcript	5.55
		Express charges	.25
	4 80		15.05
			$19.85
F. L. Monteverde, Sh'ff ex. Inj's 4.00—Spas. 4.00			8.00
			$32.85

19 In the Supreme Court of Tennessee.

Shelby Chancery Docket, No. 25.

I. M. DARNELL & SON COMPANY
vs.
THE CITY OF MEMPHIS ET AL.

Brief and Assignments of Error for the City of Memphis.

Filed April 9, 1906, Jno. W. Buford, Cl'k.

Facts.

1.

The Complainant below is a corporation, organized under the laws of the State of Tennessee, having its situs at Memphis. It is engaged in the business of manufacturing lumber and selling the same in the City of Memphis.

T. R. Pages 1-2.

2.

The property of Appellee was assessed by the proper authorities at the sum of $44,000.00; of this amount about $25,000 consisted

of machinery and other personal property, not necessary to specify. The balance represented logs and lumber, in various stages of manufacture, lying in the yards of Appellee, awaiting sale. This property represented logs and lumber manufactured from the produce of the soil of States other than Tennessee.

T. R. Pages 2-3.

3.

The bill was filed for the purpose of enjoining the collection of the City tax on that portion of the property that represented the logs and lumber in the various stages of manufacture; upon the grounds:—

20 1st. That the Constitution of Tennessee, Art. 2, Section 28, exempts from taxation, "the direct products of the soil in the hands of the producer and his immediate vendee."

2nd. "No article manufactured from the produce of this State shall be taxed otherwise than to pay inspection fees."

Art. 2, Section 30.

4.

The Constitution of Tennessee having exempted the products of the soil and articles manufactured of the produce of the soil of this State, it is illegal to tax the products of the soil of other States. That this tax is in conflict with Article 1, section 8, of the Constitution of the United States, which gives Congress the exclusive right to regulate Commerce between the several States of the Union.

2nd. That it is in conflict with Article 4, section 2, of the Federal Constitution which says, "The citizens of each State shall be entitled to all privileges and immunities of Citizens of the several States." That it is also in conflict with section 1 of the Fourteenth Amendment,—"That no State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States."

T. R. Pages 4,-5,-6.

5.

The City of Memphis Demurred to the bill and assigned six grounds of demurrer.

T. R. Pages 12-13.

6.

The City of Memphis by consent of all parties interested and by leave of Court, filed an amended demurrer, assigning additional grounds, five in number.

T. R. Pages 13-14.

21 7.

The Court over-ruled the demurrers and granted an appeal.

T. R. Page 14.

Assignments of Error.

1st. The Court erred in overruling the one, two, three, four, five and six grounds of demurrer first filed to the bill.
See T. R. 12-13.

2nd. The Court erred in over-ruling the one, two, three, four and five grounds of demurrer as amended, or, the five additional grounds.
See T. R. Pages 13-14.

8.

The Court below was in error for the following reasons:
1st. The assessment of this property for taxation, is not in conflict with Article 1. Section 8 of the Federal Constitution. The property was not in transit, or awaiting shipment. It was at rest in the hands of the owner, at its place of business, at Memphis.
2nd. It was not in conflict with Article 4, section 2 of said Constitution. It deprives no citizen of any privilege or immunity.
3rd. It is not in conflict with Article 14, section 1 known as the Fourteenth Amendment. It does not abridge the privileges and immunities of citizens of the United States.
4th. The Complainant being a corporation is not a citizen within the meaning of the Federal Constitution.
5th. The Appellee being a resident Tennessee corporation is not in a position to complain.

Brief.

1.

There is nothing in Appellee's contention that the property is protected by the Inter-State Commerce clause, of the Federal
22 Constitution, for the reason that the logs were not in transit, but had arrived at their destination. They had been manufactured, or, were in process of manufacture, into articles of various kinds, and had become a part of the general property in the State.
American Steel Wire Co. *vs.* Speed, 2 Cates, 546.
Austin *vs.* Tennessee, 179 U. S. L. Ed. 257.
Brown *vs.* Houston, 114 U. S. L. Ed. 257.
May *vs.* New Orleans, 178 U. S. L. Ed. 1165.
And many other cases.

2.

The Appellee is a corporation, having its place of business in the City of Memphis. "A corporation is not a citizen, within the meaning of the Constitutional provisions, as to privileges and immunities of citizens."
Orient Ins. Co. *vs.* Daggs, 172 U. S. 557.
Blake *vs.* McClung, 172 U. S. 237.
Paul *vs.* Virginia, 8 Wall 168, 178.

3.

The Appellee is a Tennessee Corporation, engaged in manufacturing, within the State. It is receiving the benefit of the exemption, on all articles that it manufactures out of the produce of Tennessee. It is not a case where a citizen of another State is claiming that he is being denied privileges and immunities that are extended to citizens of Tennessee. It is a case where a Tennessee corporation is not content with the exemption which it already has and is contending for more, upon the ground, that the State having exempted articles manufactured of the produce of Tennessee, in its hands, you must exempt all articles manufactured of the produce of any other
23 State by it, and in its hands—"One who does not belong to the class that might be injured by a statute, cannot raise the question of its invalidity."

Red River Nat'l Bank *vs.* Craig, 181 U. S. 548.
189 U. S. 383.
Albany County *vs.* Stanley, 105 U. S. 114.
Laposas *vs.* Bell, 180 U. S. 527.

"A Court will not listen to an objection made to the Constitutionality of an act by a party whose rights it does not affect, and on- who has no interest in defeating it."

Clark *vs.* Kansas City, 176 U. S., 114.

The appellee is not in a position to question the constitutionality of this exemption.

Castillo *vs.* McConnico, 168 U. S. 680.

4.

The purpose of the constitutional exemption was in the interest of home productions and home industries. The exemptions do not apply alone to citizens of Tennessee. Any person, regardless of his citizenship, can come to Tennessee and get the benefit of them.

Reyman Brewing Co. *vs.* Briston, 179 U. S. 444.
American Sugar Refining Co. *vs.* Louisiana, 179 U. S., 89, and cases there cited.
Williams *vs.* Pears, 179 U. S. 270.

In the case of Blake *vs.* McClung, 172 U. S. 236, the Court said, "We must not be understood as saying that a citizen of one State is entitled to enjoy in another State every privilege that may be given in the latter State to its own citizens. There are privileges that may be accorded by a state to its own people, in which citizens of other states may not participate, except in conformities to such reasonable regulations as may be established by the State. It may require a non-resident to give bond for costs, although such bond is not required of a resident. Such a regulation of the internal affairs
24 of a State, cannot reasonably be characterized as hostile to the fundamental rights of citizens of other States." See also the dissenting opinion of the Court on page 266 upon this point.

5.

It has been held by the Supreme Court repeatedly that non-residents of the State could not avail themselves of the exemption laws of this State, either as to Homestead or personalty.

11 Ham. 45
3 Pickle 83
4 Pickle 650
15 Pickle 298
1 Sneed, 50.
14 Lea 370
12 Pickle 180
17 Pickle 523.

If the Appellee was an individual and a non-resident of the State, instead of a resident corporation, there would be more force in its contention. The Supreme Court of the United States in Blake *vs.* McClung, makes this distinction, it says, "But it is equally well settled and we now hold, that a corporation is not a citizen within the meaning of the constitutional provisions that the citizens of each state shall be entitled to all privileges and immunities of citizens of the several States. The corporation cannot therefore invoke that provision for protection. Since, however, a corporation is a person within the meaning of the Fourteenth Amendment, may not the corporation invoke for its protection the clause of the Amendment, declaring that no*t* state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction, equal protection of the law. We are of the opinion that this question must have received a negative answer."

In the above case the Court applied one rule to the individual creditors and a different one to the corporation creditors. The case went by writ of error from the Supreme Court of Tennessee.

I respectfully submit that this case should be reversed and the demurrer sustained.

Respectfully Submitted,

THOS. H. JACKSON,
Sol. for Appellant.

25 STATE OF TENNESSEE, *Shelby County, ss:*

I, T. B. Caldwell, Clerk & Master of the Chancery Court of Shelby County, do hereby certify that the foregoing 16 pages contain a full, true and perfect transcript of all the proceedings had in a certain cause, lately pending herein, wherein I. M. Darnell & Son are complainants, and the City of Memphis, *et al.* are defendants, as the same appears of record and on file in my office.

In witness whereof, I have hereunto set my hand and the seal of said Court, at Office in Memphis, this 8th day of Feb'y, A. D. 1906.

[SEAL.]

T. B. CALDWELL,
Clerk & Master,
By W. M. COX, *D. C. & M.*

26 In the Supreme Court of Tennessee, Jackson, April Term, 1906.

Shelby Chancery Docket, No. 25.

I. M. DARNELL & SON CO.
vs.
THE CITY OF MEMPHIS ET AL.

Filed April 23rd, 1906, Jno. W. Buford, Cl'k.

Shelby Chancery Court.

Brief and Assignments of Error for The City of Memphis.

Facts.

I.

The Complainant below is a corporation, organized under the laws of the State of Tennessee, having its situs at Memphis. It is engaged in the business of manufacturing lumber and selling the same in the City of Memphis.
(Tr. pp. 1-2.)

II.

The property of appellee was assessed by the proper authorities at the sum of $44,000; of this amount about $25,000 consisted of machinery and other personal property not necessary to specify. The balance represented logs and lumber, in various stages of manufacture, lying in the yards of appellee awaiting sale. This property represented logs and lumber manufactured from the produce of the soil of other States than Tennessee.
(Tr. pp. 2-3.)

III.

The bill was filed for the purpose of enjoining the collection of the City tax on that portion of the property that represented the
27 logs and lumber in the various stages of manufacture upon the grounds:

First—That the Constitution of Tennessee Art. 2, sec. 28, exempts from taxation "the direct products of the soil in the hands of the producer and his immediate vendee."

Second—"No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."
(Art. 2, Sec. 30.)

IV.

That the Constitution of Tennessee having exempted the products of the soil and articles manufactured of the produce of the soil of this State, it is illegal to tax the products of the soil of other States or articles manufactured from the produce of other States. That this

tax is in conflict with Article I, Section 8, of the Constitution of the United States, which gives Congress the exclusive right to regulate commerce between the several States of the Union.

Second—That it is in conflict with Article 4, Section 2, of the Federal Constitution, which says: "The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States." That it is also in conflict with section 1 of the Fourteenth Amendment: "That no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." (Tr. pp. 4-5-6.)

V.

The City of Memphis demurred to the bill and assigned six grounds of demurrer. (Tr. pp. 12-13.)

28

VI.

The City of Memphis, by consent of all parties interested and by leave of Court, filed an amended demurrer, assigning additional grounds, five in number.
(Tr. pp. 13-14.)

VII.

The court overruled the demurrers and granted an appeal.
(Tr. p. 14.)

Assignments of Error.

First. The Court erred in overruling the first, second, third, fourth, fifth and sixth grounds of demurrer first filed to the bill. (See Tr. pp. 12-13.)

Second. The Court erred in overruling the first, second, third, fourth and fifth grounds of the demurrer as amended, or the five additional grounds. (See Tr. pp. 13-14.)

VIII.

The Court below erred for the following reasons:

First. The assessment of this property for taxation is not in conflict with Article 1, section 8, of the Federal Constitution. The property was not in transit or awaiting shipment. It was at rest in the hands of the owner, at its place of business at Memphis.

Second. It was not in conflict with Article 4, section, of said Constitution. It deprives no citizen of any privilege or immunity.

Third. It is not in conflict with Article 14, section 1, known as the Fourteenth Amendment. It does not abridge the privileges and immunities of citizens of the United States.

29 Fourth. The complainant being a corporation, is not a citizen within the meaning of the Federal Constitution.

Fifth. The appellee being a resident Tennessee corporation, is not in a position to complain.

Brief.

I.

There is nothing in appellee's contention that the property is protected by the Interstate Commerce clause of the Federal Constitution, for the reason that the logs were not in transit, but had arrived at their destination. They had been manufactured, or were in process of manufacture, into articles of various kind, and had become a part of the general property of the State.

American Steel Wire Co. *v.* Speed, 2 Cates, 546.
Austin *v.* Tennessee, 179 U. S. L. Ed. 224.
Brown *v.* Houston, 114 U. S. L. Ed. 257.
May *v.* New Orleans, 178 U. S. L. Ed. 165.
Woodman *v.* The State, 2 Swan, 354.
Machine Co. *v.* Cage, 9 Baxter, 519.
Naff *v.* Russell, 2 Cold. 36.

II.

The appellee is a corporation, having its place of business in the City of Memphis. "A corporation is not a citizen within the meaning of the constitutional provisions as to privileges and immunities of citizens."

Orient Ins. Co. *v.* Daggs, 172 U. S 557.
Blake *v.* McClung, 172 U. S. 237.
Paul *v.* Virginia, 8 Wall. 168, 178.

30 III.

The appellee is a Tennessee corporation, engaged in manufacturing, within the State. It is receiving the benefit of the exemption on all articles that it manufactures out of the produce of Tennessee. It is not a case where a citizen of another State is complaining that he is being denied privileges and immunities that are extended to citizens of Tennessee. It is a case where a Tennessee corporation is not content with the exemptions it already has, and is contending for more upon the ground that the State having exempted articles manufactured or the produce of Tennessee, in its hands, it must exempt all articles manufactured of the produce of any other State by it and in its hands. "One who does not belong to the class that might not be injured by a statute cannot raise the question of its invalidity."

Red River Nat'l Bank *v.* Craig, 181 U. S. 548; 189 U. S. 383.
Albany County *v.* Stanley, 105 U. S. 114.
Laposse *v.* Bell, 180 U. S. 527.

"A Court will not listen to an objection made to the constitutionality of an act made by a party whose rights it does not affect, and one who has no interest in defeating it."

Clark *v.* Kansas City, 176 U. S. 114.

The appellee is not in a position to question the constitutionality of this exemption.

Castillo *v.* McConnico, 168 U. S. 680.

IV.

The purpose of the constitutional exemption was in the interest of home productions and home industries. The exemptions do not apply alone to citizens of Tennessee. Any person, regardless of his citizenship, can come to Tennessee and get the benefit of them.

Ryman Brewing Co. *v.* Briston, 179 U. S. 444.

American Sugar Refining Co. *v.* Louisiana, 179 U. S. 89 and cases there cited.

31 Williams *v.* Pears, 179 U. S. 270.

In the case of Blake *v.* McClung, 172 U. S. 256, the court said: "We must not be understood as saying that a citizen of one State is entitled to enjoy, in another State, every privilege that may be given in the letter to its own citizens. There are privileges that may be accorded by a State to its own people, in which citizens of other States may not participate, except in conformities of such reasonable regulations as may be established by the State. It may require a non-resident to give bond for costs, although such bond is not required of a resident. Such a regulation of the internal affairs of a State cannot reasonably be characterized as hostile to the fundamental rights of 'citizens of other States." (See also the dissenting opinion of the Court, on page 266, upon this point.)

V.

It has been held by the Supreme Court repeatedly that non-residents of the State could not avail themselves of the exemption laws of this State, either as to homestead or personalty.

11 Ham. 45.
3 Pickle, 83.
4 Pickle, 650.
15 Pickle, 298.
1 Sneed, 50.
14 Lea, 370.
12 Pickle, 180.
17 Pickle, 23.

If the Appellee was an individual and a non-resident of the State, instead of a resident corporation, there would be more force in its contention. The Supreme Court of the United States, in Blake *vs.* McClung, makes this distinction. It says:

32 "But it is equally well settled, and we now hold, that a corporation is not a citizen within the meaning of the constitutional provisions that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States. The corporation therefore cannot invoke that provision for protection. Since, however, a corporation is a person within the Fourteenth Amendment, may not the corporation invoke for its protection the clause of the amendment declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction equal protection of the law? We are of the opinion that this question must receive a negative answer."

In the above case the Court applied one rule to the individual creditors, and a different one to the corporation creditors. The case went by writ of error from the Supreme Court of Tennessee.

VI.

It will be observed that most of the cases cited by appellee are cases where a license tax had been charged against a non-resident, or where foreign products had been specifically taxed as such. See

Walling *v.* Mich., 116 U. S. 440.
Weber *v.* Virginia, 103 U. S. 344.
Welton *v.* Missouri, 99 U. S. 275.

where these questions are discussed.

The question here is not a tax but an exemption from taxation. The property in question has become amalgamated with the general property in the State in the hands of a resident Tennessee corporation. This is not a complaint by a non-resident whose rights have been denied or whose property has been unequally taxed.

I submit that the case should be reversed and the bill dismissed.

THOMAS H. JACKSON,
Solicitor for Appellant.

33 *Brief for Appellee.*

Filed May 3rd, 1906, Jno. W. Buford, Cl'k.

In the Supreme Court of Tennessee, April Term, 1906. No. 25, Shelby Chancery.

I. M. DARNELL & SON COMPANY, Appellee,
vs.
CITY OF MEMPHIS, Appellant.

Statement of Case for Appellee.

This is a suit to determine the validity of an assessment made by the Board of Equalization for the City of Memphis upon logs brought into Tennessee from other States and lumber in the hands of the manufacturer cut from such logs, the claim on the part of the complainant being that inasmuch as the Constitution of Tennessee expressly exempts such material when cut from Tennessee soil, the state is thereby precluded from imposing taxes upon similar material cut from the soil of other states.

The bill avers that complainant is a corporation of Tennessee, domiciled in Memphis and engaged in the business of manufacturing lumber and selling its manufactured product; that the method pursued in the assessment for taxation of the property by the City is that declared by the Act of 1903, (ch. 366) which creates the Office of City assessor and provides for a board of equalization to revise his assessment (pp. 1-2).

Under that Act, the assessor made an assessment of complainant's realty and personalty. This came before the board of equali-
34 zation for review and that board assessed complainant's personalty at the gross sum of $44,000. The bill then avers:

"Of this amount $24675 was represented by machinery and other personalty as to which no question is made in this suit. The remaining $19325 was represented either by logs cut from the soil of states of the Union other than Tennessee and in the hands of complainant as the first vendee awaiting manufacture into lumber or lumber manufactured by complainant from logs of the character just stated and lying in complainant's millyard awaiting sale." (p. 2.)

Complainant made its claim before the assessor that the personalty representing the $19325 was not subject to assessment or taxation for the reasons hereinafter set forth. It also appeared before the board and made the same claim but the board declined to recognize it and assessed the property representing the $19325 for taxation and certified the same to the county trustee for collection. (p. 3.)

Complainant offered to pay the trustee the taxes on the property representing the $24675 above mentioned but declined to pay taxes claimed for the remaining personalty. The trustee then accepted from complainant $380.00, giving a receipt accordingly a copy of which is exhibited with the bill, marking thereon "Balance of Personalty, $19325, in litigation" (p. 8). Afterwards, the claim being made by the City Attorney that the deputy acted without authority in accepting any sum less than the full amount, the said sum was handed back to complainant. Thereupon complainant again tendered said sum but the trustee declined to receive it unless the additional sum of $297.60 (that being the tax on the $19325 in dispute) was also paid. Upon the refusal of this tender, complainant tendered it into Court with the original bill.

The bill then refers to provisions of the constitution of Tennessee of 1870 providing:

"All property, real, personal and mixed, shall be taxed, but the Legislature may except such as may be held by the state, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held or used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer and his immediate vendee." Art. II, sec. 28.

35 "SEC. 30. No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."

After averring that the State Supreme Court had construed these provisions as operating to exempt personalty as is here in question when cut from Tennessee soil (p. 4), the bill went on to state that the Acts of 1903 (ch. 257, p. 649) give effect to these constitutional provisions.

The bill then avers that, at the time of the assessment above mentioned and for the period of time which the assessment was in-

tended to embrace, the complainant was a manufacturer of lumber and operating a lumber mill in Memphis, and that no portion of the taxes here in controversy was for inspection fees, but was assessed and is now claimed as an ad valorem tax on personalty. (p. 5.)

The bill *the* states the contention of complainant that the personalty representing $19325 is exempt; that it is entitled to an injunction to prevent the trustee from enforcing payment of the taxes on this property and reiterates its offer to pay the taxes justly due.

The prayer of the bill is for an injunction to restrain the city and its trustee from enforcing collection of taxes in question and for general relief. (Record, p. 1-7.)

It does not appear in the bill, of course, but the fact is that this suit, by tacit consent, is to determine the whole question of the validity of the tax imposed upon logs cut from the soil of other states and the lumber manufactured therefrom.

The City of Memphis demurred and its demurrer goes to the point that on the face of the bill complainant makes no proper showing of an exemption, or of any illegality, or unconstitutionality in the assessment complained of (pp. 12-13). The issue was thus squarely raised as to the liability of such personalty to assessment and taxation in Tennessee.

The Chancellor overruled the demurrer and made the preliminary injunction perpetual (p. 14) on the ground that that tax
36 in controversy was in contravention of the complainant's right as guaranteed by the Constitution of the United States, particularly the interstate commerce clause thereof and the 14th amendment thereof as set out in the bill. From that decree the City of Memphis prosecutes this appeal.

Brief.

1. Logs in the hands of a manufacturer awaiting conversion into lumber and the lumber made therefrom in the hands of the same manufacturer are within the exemptions of the Tennessee constitution above quoted when cut from Tennessee soil.

Benedict *vs.* Davidson Co., 110 Tenn., 191.

2. The state of Tennessee, by exempting from taxation such personalty when taken from its own soil, has thereby precluded itself from taking similar personalty taken from the soil of other states for the reason that a state may not, under the Federal Constitution, discriminate in favor of the products of its own soil or in favor of its own citizens as against the products or against citizens of other states.

Welton *vs.* Missouri, 91 U. S., 275.
Walling *vs.* Michigan, 116 U. S., 446.

3. A Tennessee corporation or citizen is as much entitled to complain of the discrimination just mentioned as a foreign corporation or a non-resident. The evil complained of is the discrimination

against persons handling property from other states and affects domestic and foreign corporations alike.

4. The complainant, a corporation, while not a citizen, is a "person" within the meaning of the state and Federal Constitutions and is entitled to the protection guaranteed to persons by the Fourteenth Amendment.

37 Dugger *v.* Ins. Co., 95 Tenn., 250;
Ry. Co. *v.* Mackay, 127 U. S., 205.
Santa Clara *v.* Railway, 118 U. S., 394.

Argument.

The first proposition—that logs in the hands of a manufacturer and lumber made therefrom in the hands of the same manufacturer are within the exemptions of the Tennessee Constitution when cut from Tennessee soil—is not now open to question. In a recent case decided at Nashville this Court said:

We are of opinion that, under the facts in this record, the logs upon the yard, in the hands of the mill-operating manufacturer and his property, and the lumber, rough and smooth, cut by him from such logs grown on Tennessee soil, are articles manufactured from the produce of the State, and exempt under the provisions of section 30, article II of the constitution; and the demurrer was therefore properly overruled, and the complainants under the allegations of their bill, are entitled to recover back the taxes paid the State, and to perpetually enjoin the taxes assessed by the County and city."

Benedict *v.* Davidson Co., 110 Tenn., 191.

As observed by Mr. Justice Swayne in the Howe case, this holding must be regarded as correct for the purposes of this case and must be given "the same effect as if it were a part of the statute" or of the state constitution.

Howe Mach. Co. *v.* Gage, 100 U. S. 679.
Emert *v.* Missouri, 156 U. S., 312.

II.

The second proposition—that Tennessee, by exempting such personalty when taken from her own soil has precluded herself from taxing similar property when taken from the soil of other
38 states—is equally well settled.

In a case before the Federal Court in 1879, it appeared that Tennessee had passed an act imposing a tax of $10 upon all peddlers of sewing machines. The Court held the tax valid but solely on the ground that the state court had held "the law taxing the peddlers of such machines without regard to the place of growth or produce of material or of manufacture." Mr. Justice Swayne, however, speaking for the Court went on to say, quoting many authorities, that:

"A state cannot impose higher tax upon peddlers from another state that *in* imposed upon their own citizens *from* the like circum-

stances. Any discrimination in favor of the latter is fatal to the statute. Ward *v.* Maryland, 12 Wall., 163, 418."

Howe *v.* Gage, 100 U. S., 676.

As late as the October term, 1904, the Federal Supreme Court has referred to the Howe Machine Co. case and the Emert case (156 U. S., 312) as correct in having upheld a tax on pedlers *fro* the reason that the tax made no distinction between residents and products of the taxing state and those of other states.

Kehre *v.* Stewart, 197 U. S., 60.

In another case decided about the same time as the Howe case, the Federal Supreme Court held that:

"No state may impose upon the products of other states brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other states, more onerous public burdens or taxes than it imposes upon the like products of its own territory."

Guy *v.* Baltimore, 100 U. S., 434.

In that case certain wharfage rates were levied on vessels in the port of Baltimore laden with goods "other than the products of this state (Maryland)." The ordinance was held to be in conflict with the Federal Constitution because a like wharfage charge
39 was not levied on vessels laden with Maryland products.

In an earlier case, decided by Mr. Justice Miller, an Act imposing a state tax of fifty cents a gallon on all liquors brought into the state was declared not to be in violation of the Constitution—it appearing that the same tax was imposed on all spirituous liquors manufactured in the state. The learned Justice observed, however:

"But assuming the tax to be, as we have supposed, a discriminating tax levied exclusively upon the products of sister states, and looking to the consequences which the exercise of this power may produce if it be once conceded, amounting as we have seen to a total abolition of all commercial intercourse between the states, under the cloak of the taxing power, we are not prepared to admit that a state can exercise such a power though Congress may have failed to act on the subject in any manner whatever. * * * The tax in the case before us, if it were of the character we have suggested, discriminating adversely to the products of all other states in favor of those of Alabama, and involving a principle which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned."

Hinson *vs.* Lott, 8 Wall., 148.

A tax cannot be exacted by a state for the sale of beer or wines from a manufacturer operating in a sister state if the same tax is not exacted for the sale of similar liquors when of home manufacture.

Tiernan *v.* Renker, 102 U. S., 123.

In this last case the doctrine of the Welton case (91 U. S. 275) was approved and followed. In that case (Welton's) the State of Missouri had undertaken to exact the payment of a license tax from travelling peddlers who dealt in goods and merchandise which were not the growth, product or manufacture of the state and required no license tax from similar traders who dealt in goods which were the growth, produce or manufacture of the state. The Court held, quoting in that connection the rule of Brown *v.* Maryland, 12 Wheat., 419, that the tax exacted from dealers in goods before they could be sold was in effect a tax upon the goods themselves and that the legislation which thus discriminated in favor of the products of Missouri and against the products of other states was in conflict with the commerce clause of the Constitution.

Welton *v.* Missouri, 91 U. S., 275.

A Virginia statute undertook to provide a license to be collected from persons selling articles of home manufacture. In declaring the legislation unconstitutional, the Court said:

"By these sections, read together, we have this result: The agent for the sale of articles manufactured in other states must first obtain a license to sell, for which he is required to pay a specific tax for each County in which he sells or offer- to sell them; while the agent for the sale of articles manufactured in the State, or acting for the manufacturer, is not required to obtain a license or pay any license tax. Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states. It matters not whether the tax be laid directly upon the articles sold or in the form of license for their sale. If by reason of their foreign character the state can impose a tax upon them, or upon the persons through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the foreign article and prevent competition with the home product. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce between the several states."

Webber *v.* Virginia, 103 U. S., 350.

The very learned dissenting opinion of Mr. Justice Harlan in the case of People *v.* Roberts, while not in itself authority, is valuable in this connection as a review of a number of cases pertinent to this litigation.

People *v.* Roberts, 171 U. S., 667.

The holding of the majority of the Courts in the case last cited in no way assails the contention we are here making. The legislation there in question was upheld on the specific ground that, as construed by the New York Courts (which construction was of course binding on the Federal Court), it made no discrimination between domestic corporations and those of other states in the exemption which it granted.

People *v.* Roberts, 171 U. S., 658.

In holding that a special law which imposed a specific tax on persons engaged in the business of selling liquor at wholesale or soliciting or taking orders for such liquors shipped into the state from places outside of the state, not having their principal place of business in the state, without imposing like tax upon persons engaged in a like business in reference to liquors manufactured in the state, is unconstitutional and void as discriminating unfavorably against the citizens and products of other states, and therefore a regulation of commerce repugnant to the Federal Constitution. Mr. Justice Bradley, after a review of a number of pertinent authorities, has said:

"A discriminating tax imposed by a state operating to the disadvantage of the products of other states, when introduced into the first mentioned state, is, in effect, a regulation in restraint of commerce among the states, and as such is a usurpation of the power conferred by the constitution upon the Congress of the United States. * * * Can any power more destructive to the Union and harmony of the states be exercised than that of imposing discriminating taxes or duties on imports from other states."

42 Walling *vs.* Michigan, 116 U. S., 455.

Argument is scarcely necessary for the proposition that a discrimination in favor of local products and against the products of sister states is abhorrent to the principles established by the foregoing cases when created by an exemption in favor of local products which is not granted to products from other states. Whatever language may be employed in stating the character of the tax here in question for the purpose of upholding it, the ultimate fact remains that, under the system of taxation and exemption assailed by the complainant's bill in this cause, an emphatic discrimination exists in favor of Tennessee products against similar products coming from other states—a discrimination, the evil of which has so often been denounced.

In the American Steel & Wire Co. case (192 U. S., 500), the contention was made that the tax in question was void as a discrimination in favor of products of the soil of Tennessee. But this contention was answered by the Federal Supreme Court by pointing out that the Tennessee Court had construed the State Constitution as applying merely to ad valorem taxes and not to taxes levied under that provision of the state constitution authorizing the legislature to tax "merchants, peddlers, and privileges in such a manner as they may from time to time direct."

The tax complained of by the Steel & Wire Company was of the latter class. There is nothing in that decision at all affecting the contention we are here making.

In any number of cases, the Federal Supreme Court has adverted to the disastrous consequence which would follow any recognition of a power in the state to hamper or interfere with interstate commerce by a system of taxation which discriminated in favor of its own products, whether crude or manufactured, and against the products of other states. Retaliation would be the order of the day and interstate commerce, which the constitution designed should be

43 unrestrained except through the action of Congress, and which ought to be unrestricted as far as possible, would be

loaded down with such intolerable burdens that it would practically be destroyed. As Chief Justice Marshall long ago observed:

"Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. * * * It is not, therefore, matter of surprise that the grant should be as extensive as the mischief and should comprehend all foreign commerce, and all commerce among the states."

Brown *v.* Maryland, 12 Wheat., 446;
Steamship Co. *vs.* Penn., 122 U. S., 346.

This litigation presents a case in which the State of Tennessee is undertaking to enforce an ad valorem tax against raw material and the manufactured product therefrom in the hands of the manufacturer which came from the soil of other states when, by its constitution and statutes, it exempts similar material coming from its own soil. This is precisely the discrimination which has so often been denounced as violative of the commerce clause of the Federal Constitution.

III.

There is no force in the contention made by appellant to the effect that the appellee, because it is a domestic corporation in Tennessee, is precluded from complaining of the wrongful tax.

We quite agree to the general proposition that "a court will not listen to an objection made to the constitutionality of an act by a person whose rights it does not affect and who therefore has no interest in defeating it." But that has no application here.

44 Our claim is expressed in the early part of this brief in the quotation from the Federal Supreme Court to the effect that:

No state may impose upon the produce of other states brought therein for sale or use, or upon citizens because engaged in the sale therein and in transportation thereto of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory."

Guy *v.* Baltimore, 100 U. S., 434.

A "person" in Tennessee, who deals in products coming from the soil of other states, is clearly discriminated against by the taxation we complain of—as compared with a similar dealer who handles only products from Tennessee soil.

This discrimination we complain of is directed against the product of the soil of other states—incidentally against the persons who handle such products. It is idle to say that a Tennesse-an is precluded from complaining of the violation of the Federal Constitution merely on the ground that his parent state was the violator.

IV.

Nor is there any force in the contention that the complainant is a corporation and therefore without right to complain. A corpora-

tion is a "person" within the meaning of the Fourteenth Amendment and entitled to demand the equal protection of the laws.

Dugger *v.* Ins. Co., 95 Tenn.

In dealing with this very question Mr. Justice Bradley has said: "It was held by this Court in the case of Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196, that interstate commerce carried on by corporation- is entitled to the same protection against said exactions which is given to such commerce when carried on by
45 individuals. * * * The opinion (by Mr. Justice Field) proceeds as follows: 'Nor does it make any difference whether such commerce is carried on by individuals or corporations. Welton *v.* Missouri, 91 U. S., 275; Mobile *v.* Campbell, 106 U. S., 691. * * * While it is conceded that the property in a state belonging to a foreign corporation engaged in foreign or interstate commerce may be taxed equally with like property of a domestic corporation engaged in that business, we are clear that a tax or other burden imposed upon the property of either corporation because it is used to carry on that commerce * * * is invalid and void as an interference with and obstruction of the power of Congress in the regulation of such commerce."

Phila. S. S. Co. *v.* Penn., 122 U. S., 342.

The principle we contend for has long been recognized in Tennessee with respect to another article of commerce—cotton. This fact appears as a part of the agreed case in the Steel & Wire Co. case.

A. Steel & Wire Co. *v.* Speed, 192 U. S., 500.

We respectfully submit that the decree of the Chancellor was correct and should be affirmed.

C. H. TRIMBLE,
H. B. ANDERSON,
METCALF, MINOR &
METCALF, *For Appellee.*

46 *Decree.*

Entered June 16th, 1906.

25, Shelby C. D.

I. M. DARNELL & SON CO.
vs.
THE CITY OF MEMPHIS.

Be it remembered, that this cause came on to be heard on this the 16th day of June, 1906, before the Honorable Justices of the Supreme Court of Tennessee, upon the transcript of the record from the Chancery Court of Shelby County, the assignments of error on behalf of appellants and the reply brief by appellee, and argument of

counsel having been heard and the matters fully considered by the Court, the Court is of the opinion that there is manifest error in the record and decree of the Chancery Court of Shelby County, in this, that the demurrer interposed by the defendant, City of Memphis, was well founded and should have been sustained; therefore, the Court doth order, adjudge and decree that the decree of the Chancery Court of Shelby County be and the same is hereby in all things reversed, and the demurrer interposed by the City of Memphis, be and the same is hereby sustained and complainant's bill dismissed.

The Court holds and specifically decrees that the complainant is not protected from taxation by the interstate clause of the federal constitution, and is not denied the equal protection of the law for the reasons stated in the opinion of the Court, which is herewith filed and made a part of the record.

The Court further hold- and specifically decrees that the complainant is liable for the taxes assessed upon the property in controversy, and therefore orders that this cause be remanded to the Circuit Court of Shelby County, in order that a reference may be had to ascertain the exact amount of said taxes and for *and for* judgment
47 against complainant and its sureties on the injunction bond executed in this cause.

The Complainant, I. M. Darnell & Son and W. S. Darnell, W. T. Darnell and H. D. Minor, its sureties on the prosecution bond, shall pay all the costs of this, for which execution is hereby awarded.

48 *Amended Decree.*

Entered June 23rd, 1906.

#25, Shelby C. D.

I. M. DARNELL SON & CO.
vs.
THE CITY OF MEMPHIS and THOS. J. TAYLOR, Trustee.

In this cause it is this day ordered by the Court that the judgment entered herein June 16th, 1906, be and is hereby modified in the following particulars.

1. The order remanding the case to the Chancery Court of Shelby County is set aside.

2. It is adjudged and decreed that the amount of the taxes due by I. M. Darnell and Son Company as averred in the bill as the portion claimed to be illegal, is Two Hundred and Ninety Seven Dollars and sixty cents with a penalty of ten per cent. fixed by law and interest at six per cent. per annum from May 1st, 1904, to the present time, making a total of tax, penalty and interest now due on said portion of said assessment of Three Hundred and Sixty Six Dollars and four cents for which amount judgment is now rendered against said I. M. Darnell & Son Company, and H. D. Minor surety on the injunction bond, for which execution is awarded.

The City of Memphis is entitled to Three Hundred and Ninety Eight Dollars and fifty cents paid by the complainant into the hands of the Clerk & Master of the Chancery Court at Shelby County, but complainant is not liable for any interest or penalties thereon.

3. The Clerk will tax as a part of the costs of the case in the lower Court to be paid by the Complainant an item of Six Dollars and ninety eight cents commissions due the Clerk & Master on the money paid into Court.

4. In all other respects the decree of this Court of June 16th, 1906, is reaffirmed, all of which is finally ordered, adjudged and decreed.

49 *Petition for Writ of Error.*

Filed July 2nd, 1906. Jno. W. Buford, Cl'k.

In the Supreme Court of Tennessee.

I. M. DARNELL & SON COMPANY and H. D. MINOR
vs.
CITY OF MEMPHIS and THOS. J. TAYLOR, Trustee.

Petition for Writ of Error.

The above named complainants, I. M. Darnell & Son Company and H. D. Minor, conceiving themselves aggreived by the decree and judgment of the Supreme Court — the State of Tennessee, made and entered at Jackson Tennessee, in the above entitled case, at the April Term, 1906, do hereby pray a writ of error to the Supreme Court of the United States, for the reason specified in the assignment of Errors which is filed herewith, and that a transcript of the record and proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 2nd day of July, 1906.

H. D. MINOR,
C. W. METCALF,
C. H. TRIMBLE,
H. B. ANDERSON,
Attorneys for I. M. Darnell & Son Company, and H. D. Minor.

The foregoing petition for writ of error is allowed, this the 4th day of July, 1906.

W. D. BEARD,
Chief Justice and Presiding Judge of the Supreme Court of Tennessee.

50 *Assignments of Error on Writ of Error to Supreme Court of United States.*

Filed July 2nd, 1906. Jno. W. Buford, Cl'k.

The Supreme Court of the United States.

I. M. DARNELL & SON COMPANY and H. D. MINOR, Plaintiffs in Error,

vs.

THE CITY OF MEMPHIS and THOS. J. TAYLOR, Trustee, Defendants in Error.

Afterwards, to-wit, on the — day of July in the year of Our Lord, One Thousand Nine Hundred & Six, at the October (1905) term of the Supreme Court of the United States, at the Capitol in the City of Washington and District of Columbia, come the said I. M. Darnell & Son Company and H. D. Minor, by C. W. Metcalf, H. D. Minor, C. H. Trimble and H. B. Anderson, their attorneys, and say that in the record and proceedings in the above entitled matter, there is manifest error in this, to-wit:

1. That the Supreme Court of the State of Tennessee erred in sustaining the demurrer of the City of Memphis and Thos. J. Taylor, Trustee, to its bill, and in dismissing the same.

2. That the Supreme Court of the State of Tennessee erred in giving judgment against I. M. Darnell & Son Company, and H. D. Minor, for the amount of the taxes upon the portion of the assessment alleged in the bill to be illegal for the sum of, to-wit: $366.04, because the State of Tennessee was without power to tax the property described in the bill, as not subject to taxation, in any sum whatever, and the judgment of the Supreme Court of the State of Tennessee should have been that I. M. Darnell & Son Company and H. D. Minor were not indebted to the defendants in error in any sum whatever.

51 3. That the Court erred in adjudging that the plaintiff in error, I. M. Darnell & Son Company is not protected from taxation as claimed in its bill by the Interstate Commerce clause of the Federal Constitution, to-wit, Article 1, section 8, Paragraph 3, because by Article 2, Section 28 of the Constitution of Tennessee, it is provided, that the Legislature, in levying taxes "shall except * * * the direct product of the soil in the hands of the producer, and his immediate vendee;" and because by the said Article 2, Section 30 of the Constitution of Tennessee it is further provided, "No Article manufactured of the produce of this State, shall be taxed otherwise than to pay inspection fees;" and because, by Chapter 258, Section 2, Paragraph 5 of the laws passed by the General Assembly of the State of Tennessee for 1903, at page 632, it is provided that there shall be exempt from taxation, "all growing crops of whatever nature or kind, the direct product of the soil of this State, in the hands of the producer, or his immediate vendee, and manufactured articles from the produce of this State in the hands of the manufacturer."

The decision of the Supreme Court of Tennessee in so adjudging, amounts to a discrimination against the product of the soil of other states and articles manufactured therefrom.

4. That the Court erred in adjudging that plaintiffs in error were not denied equal protection of the law guaranteed by Article 14 Section 1 of the Amendments to the Constitution of the United States.

5. That the Court erred in holding that Chapter 366 of the Acts of the General Assembly, of the State of Tennessee for the year 1903, as published on pages 1097 to 1101 inclusive of the published Acts of the said General Assembly, notwithstanding the said provisions of the Constitution and laws of the United States, authorized the
52 assessor of the City of Memphis and the collector of taxes of said City to assess and collect the said taxes upon the property representing the $19,325 mentioned in the bill, and in rendering judgment for the said sum of $366.04, because it appears by the bill that said assessment was upon logs cut from the soil of States of the Union, other than Tennessee and in the hands of complainant as first vendee awaiting manufacture into lumber, or lumber already manufactured by complainant from logs of the character just stated, and lying in complainant's millyard and awaiting sale.

Wherefore, the said I. M. Darnell & Son Company and H. D. Minor pray, that the judgment of the Supreme Court of the State of Tennessee for the Western Division of the State, be reversed and that judgment be entered here, making the injunction granted by the Chancellor perpetual, and declaring that the said I. M. Darnell & Son Company and H. D. Minor are not indebted to the defendants in error in any sum whatever.

C. W. METCALF,
H. D. MINOR,
H. B. ANDERSON,
C. H. TRIMBLE,
Attorneys for Plaintiffs in Error.

53 *Writ of Error.*

"The within writ of Error together with copy thereof for the City of Memphis and Thomas J. Taylor, Trustee, lodged in my Office this the 5th July, 1906.

JNO. W. BUFORD,
Clerk of Supreme Court of Tennessee, Western Division."

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Tennessee before you, or some of you, being the highest Court

of law or equity of the said State in which a decision could be had in the said suit between the I. M. Darnell & Son Company, a corporation, and H. D. Minor, of the State of Tennessee, on the one side, and the City of Memphis, a municipal corporation of the State of Tennessee, and Thos. J. Taylor, Trustee, on the other side, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a treaty or statute of, or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemptions specially set up or claimed under such clause of the Constitution treaty, statute or commission; a
54 manifest error has happened to the great damage of the said I. M. Darnell & Son Company and H. D. Minor, as by their complaint appears. We being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd day of August next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 4th day of July in the year of our Lord, One Thousand Nine Hundred and six.

[Seal Circuit Court of the United States for the District of West Tennessee.]

DAN F. ELLIOTTE,
Clerk of the Circuit Court of the United States for Western District of Tenn.

Allowed by

W. D. BEARD,
Chief Justice and Presiding Judge of the Supreme Court of Tennessee.

55 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the City of Memphis and Thomas J. Taylor, Trustee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Tennessee, wherein I. M. Darnell & Son Company and H. D. Minor are plaintiffs in error, and you are defendants in error, and to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. D. Beard, Chief Justice of the Supreme Court of the State of Tennessee, this 5th day of July, in the year of our Lord, One Thousand Nine Hundred and Six.

W. D. BEARD.

Service of this above citation acknowledged for the City of Memphis and Thomas J. Taylor, Trustee, this July 7th, 1906.

THOS. H. JACKSON,
Attorney for City of Memphis and Thomas J. Taylor, Trustee.

56 *Appeal Bond.*

The Supreme Court of the United States.

I. M. DARNELL & SON COMPANY and H. D. MINOR, Plaintiffs in Error,

vs.

CITY OF MEMPHIS and THOS. J. TAYLOR, Trustee, Defendants in Error.

Know all men by these presents, that we, I. M. Darnell & Son Company, and H. D. Minor, of the City of Memphis, State of Tennessee as principal-, and S. B. Anderson as surety, are held and firmly bound unto the above named City of Memphis and Thomas J. Taylor, Trustee, in the sum of Six Hundred ($600.) Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of July, in the year of our Lord, One thousand, nine hundred and six.

Whereas, the above bound I. M. Darnell & Son Company and H. D. Minor have sued out a writ of error to the Supreme Court of the United States, to reverse a judgment rendered by the Supreme

Court of the State of Tennessee at the April Term in the year 1906, held at the City of Jackson, wherein the I. M. Darnell & Son Company were complainants and the City of Memphis and Thomas J. Taylor, Trustee, were defendants.

Now therefore, the condition of this obligation is such, that if the above named I. M. Darnell & Son Company and H. D. Minor shall prosecute said writ of error to effect and answer all damages
57 and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

I. M. DARNELL & SON COMPANY,
By C. W. METCALF, *Att'y.*,
H. D. MINOR, *Principals.*
S. B. ANDERSON, *Surety.*

Approved by
W. D. BEARD,
Chief and Presiding Justice of the Supreme Court of Tennessee.

I, John W. Buford, Clerk of the Supreme Court of Tennessee, for the Western Division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect and complete copy of the transcript of the record, Assignment of errors and briefs, Original and corrected Judgment of the Supreme Court of Tennessee, Original petition for writ of error, Original assignment of errors, The Original writ of error, Citation and Bond, as appears of record now on file in my office.

In testimony whereof, I have hereinto set my hand and affix the seal of this Court, at office in the City of Jackson, on this, the 25th day of July, A. D. 1906, and of the Independence of the United States, the 130th, year.

[Seal Supreme Court of Tennessee, Western Division.]

JOHN W. BUFORD, *Clerk.*
By —— ——, *D. C.*

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Tennessee before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the I. M. Darnell & Son Company, a corporation, and H. D. Minor, of the State of Tennessee, on the one side, and the City of Memphis, a municipal corporation of the State of Tennessee, and Thomas J. Taylor, Trustee, on the other side, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision

was against their validity; or wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemptions specially set up or claimed under such clause of the Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said I. M. Darnell & Son Company and H. D. Minor, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,
59 together with this writ, so that you have the same at Washington on the 2d day of August next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 4th day of July in the year of our Lord, one thousand nine hundred and six.

[Seal Circuit Court of the United States for the District of West Tennessee.]

DAN F. ELLIOTTE,
Clerk of the Circuit Court of the United States for Western District of Tenn.

Allowed by

W. D. BEARD,
Chief Justice and Presiding Judge of the Supreme Court of Tennessee.

60 [Endorsed:] The Supreme Court of the United States, To the Supreme Court of Tennessee. I. M. Darnell & Son Company and H. D. Minor, Plaintiffs in Error, *vs.* The City of Memphis and Thos. J. Taylor, Trustee. Writ of Error. The within writ of error, together with copy thereof, for the City of Memphis and Thomas J. Taylor, Trustee lodged in my office this July 5th, 1906. Jno. W. Buford cl'k, Clerk of Supreme Court of Tennessee, Western Division.

61 UNITED STATES OF AMERICA, *ss:*

To the City of Memphis and Thomas J. Taylor, Trustee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Tennessee, wherein I. M. Darnell & Son Company and H. D. Minor are plaintiffs in error, and you are defendants in error, and to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. D. Beard, Chief Justice of the Supreme Court of the State of Tennessee, this 5th day of July, in the year of our Lord, one thousand nine hundred and six.

W. D. BEARD.

Service of this above citation acknowledged for the City of Memphis and Thomas J. Taylor, Trustee, this July 7th 1906.

THOS. H. JACKSON,
Attorney for City of Memphis and Thomas J. Taylor, Trustee.

Endorsed on cover: File No. 20,321. Tennessee supreme court. Term No. 75. I. M. Darnell & Son Company and H. D. Minor, plaintiff in error, *vs.* The City of Memphis and Thomas J. Taylor, trustee. Filed July 21, 1906. File No. 20,321.

Office Supreme Court, U. S.
FILED.
SEP 27 1907
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

I. M. DARNELL & SON CO., ET AL.,
Plaintiffs in Error,

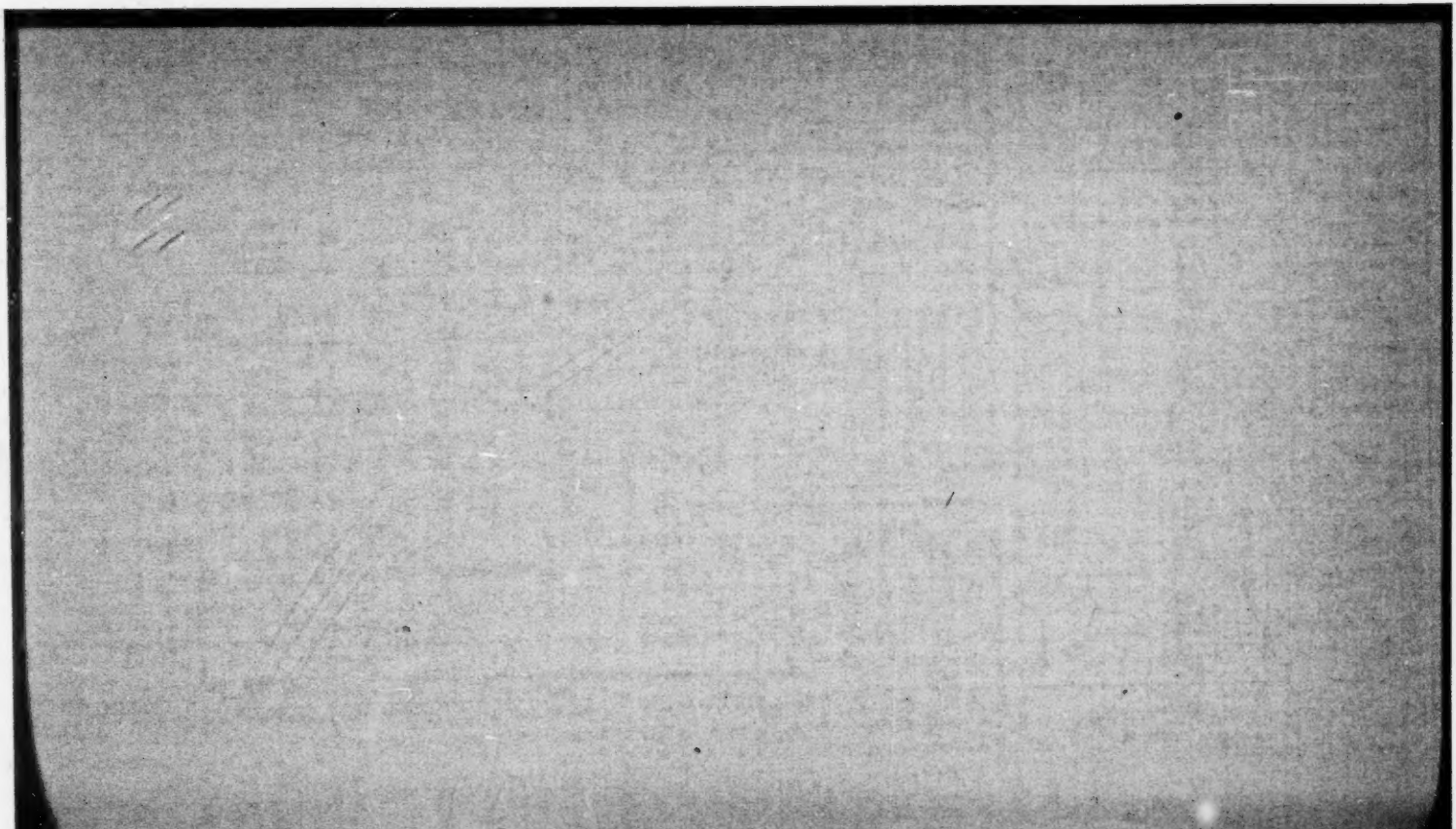
vs.

THE CITY OF MEMPHIS, ET AL.,
Defendants in Error.

No. 75.

STATEMENT OF CASE, ASSIGNMENTS OF ERROR AND BRIEF FOR PLAINTIFFS IN ERROR.

C. W. Metcalf,
C. H. TRIMBLE,
METCALF, MINOR & METCALF,
H. B. ANDERSON,
For Plaintiffs in Error.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

I. M. DARNELL & SON CO., ET AL.,
Plaintiffs in Error,

vs.

THE CITY OF MEMPHIS, ET AL.,
Defendants in Error.

No. 75.

Assignments of Error and Brief for Plaintiffs in Error on writ of error by this Court to the Supreme Court of Tennessee.

STATEMENT OF THE CASE.

On January 30, 1905, plaintiff in error, I. M. Darnell & Son Co., a corporation of the State of Tennessee, domiciled at Memphis, filed its original bill in the Chancery Court of Shelby County, Tennessee, in which it averred specifically:

1. That it had been for more than three years past a corporation of Tennessee domiciled at Memphis and engaged since its organization in the business of manufacturing lumber and selling its manufactured product there; that the defendant, the City of Memphis, was a municipal corporation of Tennessee and the defendant, Taylor, was county trustee of Shelby County, and charged with the collection of all taxes (excluding license fees) due said city.

2. That the method pursued for the assessment of property for taxation by the city is that declared by Chap. 366 of the Acts of Tennessee for 1903 (pp. 1097-1101 of the published acts). By that act the office of city tax assessor was created, whose duty it was to assess all property within the corporate limits of the city. The same act authorized the city council to elect a board of equalization consisting of five freeholders, who should revise the assessment made by the assessor.

3. Acting under that law, the assessor assessed the company's property in Memphis and by this assessment, after its review by the board of equalization, the company's personalty was assessed at the gross sum of $44,000. Of this amount $24,675 was represented by machinery and other personalty as to which no question is made in this suit. The remaining $19,325 was represented either by logs cut from the soil of the states of the Union other than Tennessee and in the hands of the company as first vendee awaiting manufacture into lumber or lumber already manufactured by the company from logs

of the character just stated, and lying in its millyard awaiting sale. The company appeared before the board and presented its contention that the personalty representing the $19,325 was not subject to taxation for the reasons hereinafter set forth. The same contention had been made before the city assessor who had conceded its correctness, but the board of equalization declined to recognize it and insisted upon taxing the property representing the $19,325, and it was accordingly assessed and the assessment duly certified to the county trustee for collection.

4. That the company saw the county trustee and offered to pay taxes on the first sum above mentioned but declined to pay on the latter. The trustee declined to receive anything less than the entire tax. Thereupon the company tendered the amount of the tax it admitted to be due, but the trustee having declined to receive it or to entertain the claim of exemption already propounded, the company filed its bill and tendered into court the amount of the tax it admitted to be due.

5. That the Constitution of Tennessee of 1870, article II, secs. 28 and 30, provided as follows:

"Sec. 28. All property, real, personal, or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities, or towns, and used exclusively for public or corporation purposes, and such as may be held or used for purposes purely religious, charitable, scientific, literary, or educational, and shall except one thousand dollars' worth of personal property in the hands of each tax payer, and the direct product of the soil in the hands of the producer, and his immediate vendee.

Sec. 30. No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."

That the Supreme Court of Tennessee has held that "so far as these provisions relate to the direct product of the soil, in the hands of the producer and his immediate vendee, and to articles manufactured of the produce of this State, they are mandatory and self-executing;" that the term "produce of the State" is "intended to embrace whatever is produced or grown in the State, or is the yield of the State, whether it be crops, or timber, or coal, or iron, or marble, or wood, or any other article which may be treated as produced or grown within the State from or on the soil."

6. That the General Assembly of Tennessee by Act of April 16, 1903 (pp. 599-708 of the published acts), provided for a recognition of the constitutional exemption just mentioned, expressly enacting that "the value of the articles manufactured from the produce of the State in the hands of the manufacturer shall be deducted in assessing the property" and that "in the case of manufacturers, the value of the article manufactured from the produce of the State in the hands of the manufacturer, shall, in making the assessment, be deducted." These provisions are to be found in section 23 of said act at page 649 of the published acts for 1903.

7. That at the time of the assessment mentioned, and for the period of time embraced by it, the company was a manufacturer of lumber, owning and operating a

lumber mill in Memphis. No portion of the tax in controversy is for inspection fees, but all of it was assessed and is now claimed by the city as an *ad valorem* tax on personalty.

8. That the company was advised that under the Constitution of the United States, particularly that portion thereof, to-wit, article 1, section 8, giving to Congress the power to regulate commerce with foreign nations and among the several states, and that portion, to-wit, article XIV of the amendments denying the right to any state to deny to any person within its jurisdiction the equal protection of its laws, the assessment for taxation of the personalty representing the $19,325.00 hereinbefore mentioned—the same being personalty which would be expressly exempt under the Constitution and Laws of Tennessee had it come from the soil of Tennessee instead of from the soil of a sister State—is unlawful and wholly invalid; that it constitutes an unlawful discrimination in favor of the products of the soil of Tennessee and articles manufactured from the produce of Tennessee and against products or produce of other states of the Union.

9. That under the laws of Tennessee it was the duty of the county trustee, upon the failure of any person to pay the tax assessed against personalty, to enforce payment by distress and sale of the delinquent's property; that the trustee was threatening to enforce the payment of this tax in that mode and would do so unless the entire amount demanded was paid immediately; that such a pro-

ceeding would work an irreparable injury to the company; that complainant was advised that he was entitled to an injunction to restrain such distress and sale as to that portion of the tax in controversy; that a part of the tax ($18.48) was claimed as a tax upon a part of the company's realty and constituted a lien thereon but the trustee had declined to receive even this tax unless the entire amount claimed on personalty was paid.

10. That the company tendered into court with its bill the sum of $380, that being the tax which it admitted to be due the city, same having been theretofore tendered to the county trustee and by him refused.

11. The prayer of the bill was for process; that a preliminary injunction issue restraining the defendants from further attempting to enforce the tax on the "property hereinbefore described as representing in said assessments the $19,325 above mentioned;" that on final hearing this injunction be made permanent; and for general relief (Record, pp. 1-6).

The bill, having been duly sworn to, was filed, together with cost and injunction bonds, and thereupon an injunction issued (Record, p. 8).

On May 24, 1905, the bill was amended by striking from the prayer of the bill the words "as representing in said assessment the $19,325 above mentioned" (p. 7), but this amendment was for the purpose of restraining the sale of a small tract of real estate embraced in the tax bills and is not specially important.

Process having issued, the defendants, the City of

Memphis and the county trustee, came and filed a demurrer which appears at page 9 of the record. Afterwards, additional grounds of demurrer, which appear in page 10 of the record, were filed.

The chancellor overruled the demurrer and in the decree recited as the ground therefor, "the court being of the opinion, and so holding, that the tax in controversy is in contravention of the rights of complainant as guaranteed by the Constitution of the United States, and particularly the Interstate Commerce clause thereof, and the Fourteenth Amendment thereof, as set out in the complainant's original bill" (Record, p. 11).

An appeal to the Supreme Court of Tennessee was prayed and perfected by the defendants, and the cause was heard on that appeal in May, 1906. Various assignments of error and a brief were filed by the City of Memphis and its tax collector. A brief was also filed on behalf of the company. Both of these briefs appear at large in the printed record. Both discussed the issues raised by the bill and particularly the applicability and effect of the Interstate Commerce clause and the Fourteenth Amendment of the Federal Constitution (Record, pp. 12-29).

At the same term, June 16, 1906, a decree was entered by the Supreme Court of Tennessee which, as amended on June 23, 1906, adjudged and decreed in effect that the company was liable for the tax in controversy. The decree also rendered judgment for the amount of that tax against the company and H. D. Minor, surety on its injunction bond, and execution for that

amount and costs was accordingly awarded (Record, p. 30).

On July 2, 1906, the company and the surety on its injunction bond (against both of whom judgment for the amount of the tax had been rendered) filed in the Supreme Court of Tennessee their petition for a writ of error. And this petition was allowed on July 4, 1906, by Hon. W. D. Beard, Chief Justice and presiding judge of that court (Record, p. 31).

With the petition for writ of error just mentioned were filed assignments of error herein set out and which appear at large in the printed record (Record, pp. 32-33).

The writ of error was accordingly issued, appeal bond executed and filed and service of citation acknowledged by the defendants in error. So that the cause is now here for determination upon those assignments.

ASSIGNMENTS OF ERROR.

1. That the Supreme Court of the State of Tennessee erred in sustaining the demurrer of the City of Memphis and Thos. J. Taylor, trustee, to its bill and in dismissing the same.

2. That the Supreme Court of the State of Tennessee erred in giving judgment against I. M. Darnell & Son Company, and H. D. Minor, for the amount of the taxes upon the portion of the assessment alleged in the bill to be illegal for the sum of, to-wit, $366.04, because the State of Tennessee was without power to tax the property described in the bill as not subject to taxation, in any sum whatever, and the judgment of the Supreme Court of the State of Tennessee should have been that I. M. Darnell & Son Company and H. D. Minor were not indebted to the defendants in error in any sum whatever.

3. That the court erred in adjudging that the plaintiff in error, I. M. Darnell & Son Company, is not protected from taxation as claimed in its bill by the Interstate Commerce clause of the Federal Constitution, to-wit, article 1, section 8, paragraph 3, because by article 2, section 28 of the Constitution of Tennessee it is

provided, that the Legislature, in levying taxes, "shall except * * * the direct product of the soil in the hands of the producer, and his immediate vendee;" and because by the said article 2, section 30 of the Constitution of Tennessee it is further provided, "No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees;" and because, by chapter 258, section 2, paragraph 5 of the laws passed by the General Assembly of the State of Tennessee for 1903, at page 632, it is provided that there shall be exempt from taxation, "all growing crops, of whatever nature or kind, the direct product of the soil of this State, in the hands of the producer or his immediate vendee, and manufactured articles from the produce of this State in the hands of the manufacturer."

The decision of the Supreme Court of Tennessee, in so adjudging, amounts to a discrimination against the produce of the soil of other states and articles manufactured therefrom.

4. That the court erred in adjudging that plaintiffs in error were not denied equal protection of the law guaranteed by article 14, section 1 of the Amendments to the Constitution of the United States.

5. That the court erred in holding that chapter 366 of the Acts of the General Assembly of the State of Tennessee for the year 1903, as published on pages 1097 to 1101, inclusive, of the published Acts of the said General Assembly, notwithstanding the said provisions of the Constitution and laws of the United States, authorized the assessor of the City of Memphis and the collect-

or of taxes of said city to assess and collect the said taxes upon the property representing the $19,325 mentioned in the bill, and in rendering judgment for the said sum of $366.04, because it appears by the bill that said assessment was upon logs cut from the soil of States of the Union other than Tennessee and in the hands of complainant as first vendee awaiting manufacture into lumber, or lumber already manufactured by complainant from logs of the character just stated, and lying in complainant's millyard and awaiting sale.

BRIEF.

1. Logs in the hands of a manufacturer awaiting conversion into lumber and the lumber made therefrom in the hands of the same manufacturer are within the exemptions of the Tennessee Constitution above quoted when cut from Tennessee soil.

Benedict vs. Davidson Co., 110 Tenn., 191.

2. The State of Tennessee, by exempting from taxation such personalty when taken from its own soil, has thereby precluded itself from taxing similar personalty taken from the soil of other states for the reason that a state may not, under the Federal Constitution, discriminate in favor of the products of its own soil or in favor of its own citizens as against the products or against citizens of other states.

Welton vs. Missouri, 91 U. S., 275.
Walling vs. Michigan, 116 U. S., 446.

3. A Tennessee corporation or citizen is as much entitled to complain of the discrimination just mentioned as a foreign corporation or a non-resident. The evil complained of is the discrimination against persons handling property from other states and affects domestic and foreign corporations alike.

4. The complainant, a corporation, while not a citizen, is a "person" within the meaning of the State and Federal Constitutions and is entitled to the protection guaranteed to persons by the Fourteenth Amendment.

Dugger vs. Ins. Co., 95 Tenn., 250.
Ry. Co. vs. Mackay, 127 U. S., 205.
Santa Clara vs. Railway, 118 U. S., 394.

ARGUMENT.

The first proposition—that logs in the hands of a manufacturer and lumber made therefrom in the hands of the same manufacturer are within the exemptions of the Tennessee Constitution when cut from Tennessee soil —is not now open to question. In a recent case decided at Nashville the court said:

"We are of opinion that, under the facts in this record, the logs upon the yard, in the hands of the mill-operating manufacturer and his property, and the lumber, rough and smooth, cut by him from such logs grown on Tennessee soil, are articles manufactured from the produce of the State, and exempt under the provisions of section 30, article II of the Constitution, and the demurrer was therefore properly overruled, and the complainants, under the allegations of their bill, are entitled to recover back the taxes paid the State, and to perpetually enjoin the taxes assessed by the county and city."

Benedict vs. Davidson Co., 110 Tenn., 191.

As observed by Mr. Justice Swayne in the Howe case, this holding must be regarded as correct for the purposes of this case and must be given "the same effect as if it were part of the statute"or of the state constitution.

Howe Mach. Co. vs. Gage, 100 U. S., 679.
Emert vs. Missouri, 156 U. S., 312.

II.

The second proposition—that Tennessee, by exempting such personalty when taken from her own soil has precluded herself from taxing similar property when taken from the soil of other states—is equally well settled.

In a case before this court in 1879, it appeared that Tennessee had passed an act imposing a tax of $10 upon all peddlers of sewing machines. The Court held the tax valid but solely on the ground that the state court had held "the law taxing the peddlers of such machines levied the tax upon all peddlers of sewing machines without regard to the place of growth or produce of material or of manufacture." Mr. Justice Swayne, however, speaking for the Court, went on to say, quoting many authorities, that:

"A state cannot impose a higher tax upon peddlers from another state than is imposed upon her own citizens under the like circumstances. Any discrimination in favor of the latter is fatal to the statute. *Ward vs. Maryland,* 12 Wall., 163, 418."

Howe vs. Gage, 100 U. S., 676.

As late as the October term, 1904, this Court has referred to the Howe Machine Co. case and the Emert case (156 U. S., 312) as correct in having upheld a tax on peddlers *for the reason* that the tax made no distinction between residents and products of the taxing state and those of other states.

Kehre vs. Stewart, 197 U. S., 60.

In another case, decided about the same time as the Howe case, this Court held that:

"No state can impose upon the products of other states brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other states, more onerous public burdens or taxes than it imposes upon the like products of its own territory."

Guy vs. Baltimore, 100 U. S., 434.

In that case certain wharfage rates were levied on vessels in the port of Baltimore laden with goods "other than the products of this state (Maryland)." The ordinance was held to be in conflict with the Federal Constitution because a like wharfage charge was not levied on vessels laden with Maryland products.

In an earlier case, in which the opinion was written by Mr. Justice Miller, an act imposing a state tax of fifty cents a gallon on all liquors brought into the state was declared not to be in violation of the Constitution—it appearing that the same tax was imposed on all spirituous liquors manufactured in the state. The learned Justice observed, however:

"But, assuming the tax to be, as we have supposed, a discriminating tax, levied exclusively upon the products of sister states, and looking to the consequences which the exercise of this power may produce if it be once conceded, amounting, as we have seen, to a total abolition of all commercial intercourse between the states, under the cloak of the taxing power, we are not prepared to admit that a state can exercise such a power though Congress may have failed to act on the subject in any man-

ner whatever. * * * The tax in the case before us, if it were of the character we have suggested, discriminating adversely to the products of all other states in favor of those of Alabama, and involving a principle which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned."

Hinson vs. Lott, 8 Wall., 148.

A tax cannot be exacted by a state for the sale of beer or wines from a manufacturer operating in a sister state if the same tax is not exacted for the sale of similar liquors when of home manufacture.

Tiernan vs. Render, 102 U. S., 123.

In this last case the doctrine of the Welton case (91 U. S., 275) was approved and followed. In Welton's case, the State of Missouri had undertaken to exact payment of a license tax from traveling peddlers who dealt in goods and merchandise which were not the growth, product or manufacture of the state and required no license tax from similar traders who dealt in goods which were the growth, produce or manufacture of the state. The Court held, quoting in that connection the rule of *Brown vs. Maryland,* 12 Wheat., 419, that the tax exacted from dealers in goods before they could be sold was in effect a tax upon the goods themselves and that the legislation which thus discriminated in favor of the products of Missouri and against the products of other states was in conflict with the commerce clause of the Constitution.

Welton vs. Missouri, 91 U. S., 275.

A Virginia statute undertook to provide a license to be paid by persons selling articles not of home manufacture. In declaring the legislation unconstitutional, the Court said:

"By these sections, read together, we have this result: The agent for the sale of articles manufactured in other states must first obtain a license to sell, for which he is required to pay a specific tax for each county in which he sells or offers to sell them; while the agent for the sale of articles manufactured in the state, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states. * * * It matters not whether the tax be laid directly upon the articles sold or in the form of license for their sale. If by reason of their foreign character the state can impose a tax upon them, or upon the person through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the introduction of the foreign article, and prevent competition with the home product. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several states."

Webber vs. Virginia, 103 U. S., 350.

The very learned dissenting opinion of Mr. Justice Harlan in the case of *People vs. Roberts,* while not in itself authority, is valuable in this connection as a review of a number of cases pertinent to this litigation.

People vs. Roberts, 171 U. S., 667.

The holding of the majority of the court in the case

last cited in no way assails the contention we are here making. The legislation there in question was upheld on the specific ground that, as construed by the New York courts (which construction was of course binding on the Federal Court), it made no discrimination between domestic corporations and those of other states in the exemption which it granted.

People vs. Roberts, 171 U. S., 658.

In holding that a special law, which imposed a specific tax on persons engaged in the business of selling liquor at wholesale or soliciting or taking orders for such liquors shipped into the state from places outside of the state, not having their principal place of business in the state, without imposing a like tax upon persons engaged in a like business in reference to liquors manufactured in the state, is unconstitutional and void as discriminating unfavorably against the citizens and products of other states, and as being a regulation of commerce repugnant to the Federal Constitution, Mr. Justice Bradley, after a review of a number of pertinent authorities, has said:

"A discriminating tax imposed by a state operating to the disadvantage of the products of other states, when introduced into the first mentioned state, is, in effect, a regulation in restraint of commerce among the states, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States. * * * Can any power more destructive to the Union and harmony of the states be exercised than that of imposing discriminating taxes or duties on imports from other states?"

Walling vs. Michigan, 116 U. S., 455.

Argument is scarcely necessary for the proposition that a discrimination in favor of local products and against the products of sister states is abhorrent to the principles established by the foregoing cases when created by an exemption in favor of local products which is not granted to products from other states. Whatever language may be employed in stating the character of the tax here in question for the purpose of upholding it, the ultimate fact remains that, under the system of taxation and exemption assailed by the complainant's bill in this cause, an emphatic discrimination exists in favor of Tennessee products against similar products coming from other states—a discrimination, the evil of which has so often been denounced.

In the American Steel & Wire Co. case (192 U. S., 500), the contention was made that the tax in question was void as a discrimination in favor of products of the soil of Tennessee. But this contention was answered by the Federal Supreme Court by pointing out that the Tennessee court had construed the State Constitution as applying merely to *ad valorem* taxes and not to taxes levied under that provision of the State Constitution authorizing the Legislature to tax "merchants, peddlers, and privileges in such a manner as they may from time to time direct."

The tax complained of by the Steel & Wire Company was of the latter class. There is nothing in that decision at all affecting the contention we are here making.

In any number of cases, this Court has adverted to the disastrous consequences which would follow any recognition of a power in the state to hamper or interfere with interstate commerce by a system of taxation which discriminated in favor of its own products, whether crude or manufactured, and against the products of other states. Retaliation would be the order of the day and interstate commerce, which the Constitution designed should be unrestrained except through the action of Congress, and which ought to be unrestricted as far as possible, would be loaded down with such intolerable burdens that it would practically be destroyed. As Chief Justice Marshall long ago observed:

"Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. * * * It is not, therefore, matter of surprise that the grant should be as extensive as the mischief and should comprehend all foreign commerce and all commerce among the states."

Brown vs. Maryland, 12 Wheat., 446.
Steamship Co. vs. Penn., 122 U. S., 346.

This litigation presents a case in which the State of Tennessee is undertaking to enforce an *ad valorem* tax against raw material and the manufactured product therefrom in the hands of the manufacturer which came from the soil of other states when, by its Constitution and statutes, it exempts similar material coming from its own soil. This is precisely the discrimination which has so

often been denounced as violative of the commerce clause of the Federal Constitution.

III.

There is no force in the contention made by the City of Memphis to the effect that the company, because it is a domestic corporation in Tennessee, is precluded from complaining of the wrongful tax.

We quite agree to the general proposition that "a court will not listen to an objection made to the constitutionality of an act by a person whose rights it does not affect and who therefore has no interest in defeating it." But that has no application here.

Our claim is expressed in the early part of this brief in the quotation from the Federal Supreme Court to the effect that:

"No state can, consistently with the Federal Constitution, impose upon the products of other states brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto of the products of other states, more onerous public burdens or taxes than it imposes upon the like products of its own territory."

Guy vs. Baltimore, 100 U. S., 434.

A "person" in Tennessee, who deals in products coming from the soil of other states, is clearly discriminated against by the taxation we complain of—as compared with a similar dealer who handles only products from Tennessee soil.

This discrimination we complain of is directed against the product of the soil of other states—incidentally against the persons who handle such products. It is

idle to say that a Tennessean is precluded from complaining of the violation of the Federal Constitution merely on the ground that his parent state was the violator.

IV.

Nor is there any force in the contention that the complainant is a corporation and therefore without right to complain. A corporation is a "person" within the meaning of the Fourteenth Amendment and entitled to demand the equal protection of the laws.

Dugger vs. Ins. Co., 95 Tenn., 250.

In dealing with this very question Mr. Justice Bradley has said:

"It was held by this court in the case of *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 196, that interstate commerce carried on by corporations is entitled to the same protection against state exactions which is given to such commerce when carried on by individuals. * * * The opinion (by Mr. Justice Field) proceeds as follows: 'Nor does it make any difference whether such commerce is carried on by individuals or corporations. *Welton vs. Missouri*, 91 U. S., 275; *Mobile vs. Kimball*, 102 U. S., 691. * * * While it is conceded that the property in a state belonging to a foreign corporation engaged in foreign or interstate commerce may be taxed equally with like property of a domestic corporation engaged in that business, we are clear that a tax or other burden imposed upon the property of either corporation because it is used to carry on that commerce * * * is invalid and void as an interference with, and obstruction of, the power of Congress in the regulation of such commerce.' "

Phila. S. S. Co. vs. Penn., 122 U. S., 342.

V.

The principle we contend for has long been recognized in Tennessee with respect to another article of commerce—cotton. This fact appears as a part of the agreed case in the Steel & Wire Co. case.

A. Steel & Wire Co. vs. Speed, 192 U. S., 500.

The foregoing brief and argument is a literal copy (*mutatis mutandis*) of the brief and argument filed by these plaintiffs in error before the Supreme Court of Tennessee when the case was heard there. We care to add nothing to it beyond a review of the opinion rendered by that court and appearing in Vol. 116, pp. 424-444, of the Tennessee Reports. This opinion was filed some time after the entry of the decree in the Supreme Court and some time after the record herein had been transmitted to this Court.

In the first of the two propositions discussed in the opinion, the learned court appears to have misapprehended the contention we made. Repeated in another form, our contention is that the State of Tennessee is precluded from taxing any logs or lumber in the hands of the manufacturer for that by its Constitution it has precluded itself from taxing such logs when they come from the soil of Tennessee and thereby equally precluded itself from

taxing similar logs cut from the soil of other states, because the taxation of the latter class of logs means essentially a discrimination in favor of the products of Tennessee against the products of her sister states.

It is not essential to our claim that the logs in controversy shall have been at the time of their taxation the subject of interstate commerce. Whether they were at rest within the state and a part of the taxable property of the state (independent of the immediate question here involved) so that they would come within the principle of the American Steel & Wire case (192 U. S., 500) is not at all important.

It is now beyond controversy that the effect of the Interstate Commerce clause of the Constitution, taken in connection with the inaction of Congress, is to leave such commerce untrammeled by state legislation (except, of course, within well defined and well understood exceptions arising out of the police powers of the state in matters affecting the health and morals of the citizens). The effect of the right claimed by the state in this case is directly to affect interstate commerce by discrimination in taxation in favor of Tennessee products. Indeed, the recognition of the right claimed by the state necessitates the concession to Tennessee of the right so to discriminate in favor of its own products as to exclude from its territory *all* products of other states.

As said in the opinion of the learned Supreme Court of Tennessee, the power to tax is a pervading attribute of sovereignty and involves the very right of the state

to exist. But it is equally true that the power to tax is the power to destroy, and no right of taxation on the part of the state can be recognized which necessitates the admission of power on the part of that state to destroy interstate commerce within its borders.

All pervading and all essential as the state's power to tax may be, it still has its limitations. And one of the first among these is that the power shall not be so exercised as directly to hinder or burden commerce among the states.

An examination of the authorities reviewed in the learned opinion of the Supreme Court of Tennessee will indicate that none of them controvert the proposition we have urged.

Thus in the case of *Michigan Central R. R. Co. vs. Powers,* 201 U. S., 543, the holding was merely that there was nothing in the Federal Constitution preventing a state from singling out railroad and other corporate property and taxing it for state purposes in a manner and at a rate different from that applicable to other property. There is nothing in the opinion which relates even remotely to the question of state taxation as affected by the Interstate Commerce clause of the Federal Constitution.

In the case of *People vs. Roberts,* 171 U. S., 658, the decision was as to the right of New York to impose a franchise tax upon corporations doing business within that state and at the same time to exempt from the tax corporations wholly engaged in manufacturing or mining

within that state. In the course of the opinion, Mr. Justice Shiras, after citing the case of *Walling vs. Michigan*, 116 U. S., 446, observes:

"If the object of the law in question was to impose a tax upon products of other states, while exempting similar domestic goods from taxation, there might be room to contend that such a distinction was constitutionally objectionable, as tending to affect or regulate commerce between the states. But we think that, obviously, such is not the purpose of this legislation."

People vs. Roberts, 171 U. S., 658.

The case of *Cox vs. Texas*, 202 U. S., 446, relied upon by the Supreme Court of Tennessee, in no wise conflicts with the proposition for which we contend. That case was an action upon a statutory bond executed by Cox and sureties in compliance with the statute of Texas providing for taxes on sellers of spirituous liquors. Recovery on the bond was resisted on the ground that the statute providing for it was unconstitutional in that it discriminated "unconstitutionally between two classes of business in the state, naturally existing there." It is enough to say of that case that there was not properly before the court any question of the interstate commerce clause. The Fourteenth Amendment alone was relied upon and the case was argued in this Court " on the Fourteenth Amendment alone" although there was some slight reference to interference with commerce in one of the briefs. That reference, however, was "rather in aid of the argument based on *Connelly vs. Sewer Pipe Co*.

184 U. S., 540, than as an independent point." And Mr. Justice Holmes observed in that connection "At all events, the question is not open here."

The court further held that any right which may spring from Interstate Commerce clause of the Constitution, could not be used to enlarge, for the purpose of that case, the privileges and immunities or the equal protection of the laws secured by the Fourteenth Amendment, just as the converse had been previously held in the Keokuk Bridge case (175 U. S., 626).

In the case of *American Sugar Refining Co. vs. Louisiana*, there was an attack upon a statute of Louisiana which imposed a license tax upon manufacturers engaged in the business of refining sugar but exempted from this tax those who refined the products of their own plantations. Of this case two things may be said. The distinction made as to the two classes of manufacturers, and which was regarded as not improper, was a distinction having some natural justice to support it—a *raison d'etre*. And there was involved no Federal question other than the effect of the Fourteenth Amendment. Indeed, there was a motion presented to dismiss the writ of error on the ground that the record disclosed no federal question and there was nothing to preclude the granting of this motion except the fact that the protection of the Fourteenth Amendment was invoked in the answer. The language of the court in speaking, in very general terms, of the broad powers of the state as to taxation in no way opposes the contention we here make.

We therefore ask that the decree of the Supreme Court of Tennessee be reversed.

Respectfully submitted,

C. H. TRIMBLE, C. W. Metcalf,
METCALF, MINOR & METCALF,
H. B. ANDERSON,

For Plaintiffs in Error.

NOTE. Reference has been made in this brief to two chapters of the Acts of the General Assembly of Tennessee for 1903. These chapters have not been printed as an addendum here for the reason that they are very voluminous and throw no light whatever upon this controversy. They simply indicate a legislative obedience to the provisions of the Tennessee Constitution which the Tennessee court has declared are self-executing.

Office Supreme Court, U. S.
FILED.
DEC 9 1907
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

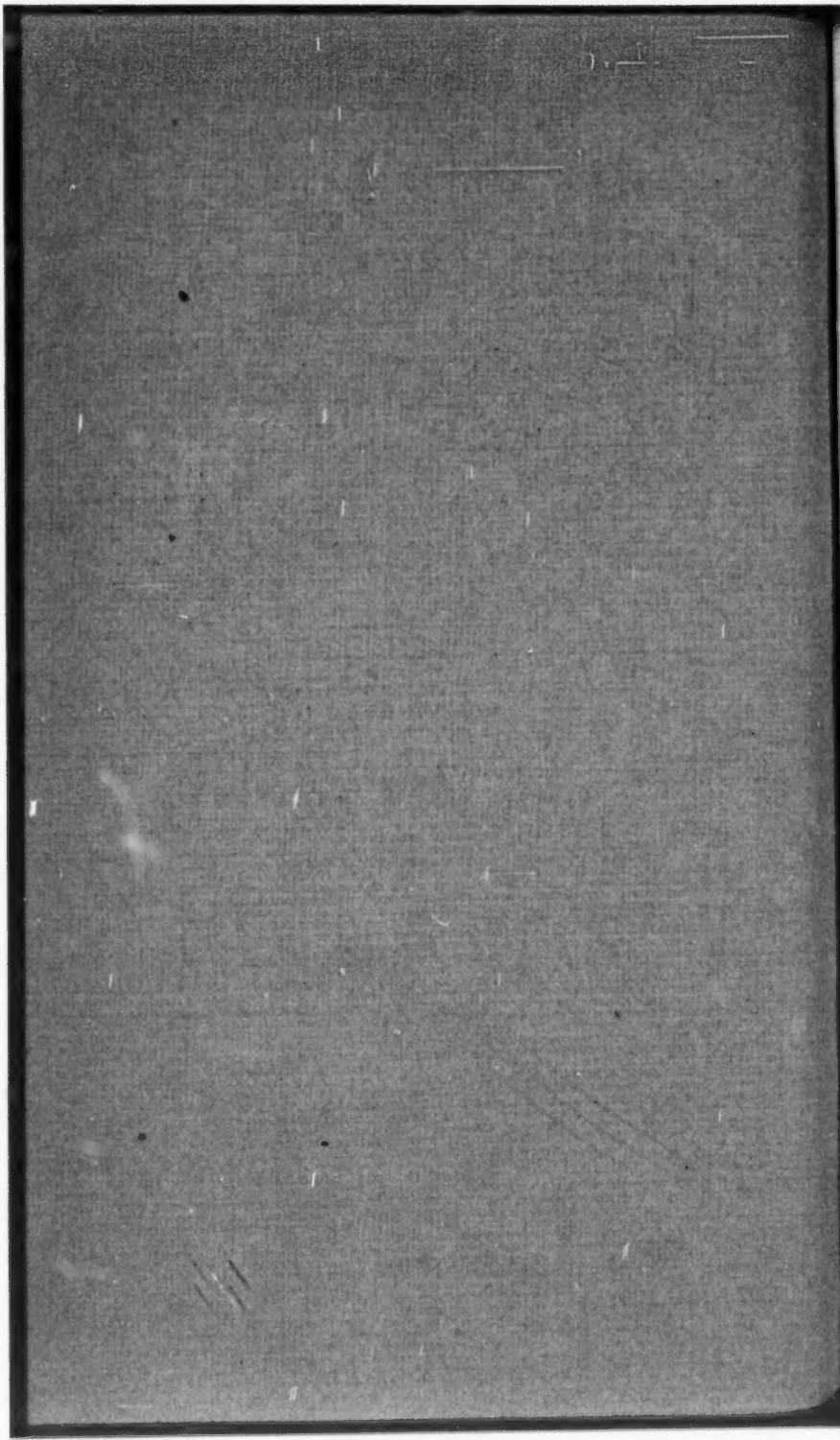
I. M. DARNELL & SON CO. ET AL., Plaintiffs in Error,

vs. No. 75.

THE CITY OF MEMPHIS ET AL., Defendants in Error.

STATEMENT OF THE CASE AND BRIEF FOR DEFENDANTS IN ERROR.

WILLIAM H. CARROLL,
THOMAS H. JACKSON,
MARION G. EVANS,
For Defendants in Error.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

I. M. DARNELL & SON CO. ET AL., Plaintiffs in Error,

vs. No. 75.

THE CITY OF MEMPHIS ET AL., Defendants in Error.

STATEMENT OF THE CASE AND BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

1.

I. M. Darnell & Son Company, plaintiff in error, is a corporation organized under the laws of the State of Tennessee, having its situs at Memphis. It is engaged in the business of manufacturing lumber and selling the same in the city of Memphis.

2.

The property of the plaintiff in error was assessed by the proper authorities at the sum of $44,000; of

this amount about $25,000 consisted of machinery and other personal property not necessary to specify. The balance represented logs and lumber, and in various stages of manufacture, lying in the yards of the plaintiffs in error awaiting sale. This property represented logs and lumber manufactured from the produce of soil of other States than Tennessee.

3.

The bill was filed by the plaintiffs in error for the purpose of enjoining the collection of city taxes on that portion of the property that represented the logs and lumber in the various stages of manufacture, upon the same grounds which plaintiff in error rely upon in their assignments of error and brief in this court.

4.

The city of Memphis demurred to the bill, which demurrer was by the chancellor overruled and an appeal was prayed and perfected by the city of Memphis to the Supreme Court of Tennessee.

5.

The Supreme Court of Tennessee reversed the decision of the chancellor, sustained the demurrer of the city of Memphis and dismissed the bill of complaint. The plaintiffs in error filed their petition for a writ of error to the Supreme Court of the United States, which was issued, and the cause is here for determination upon the errors assigned by plaintiffs in error.

Questions Raised by Assignments of Error.

The assignments of error filed by plaintiffs in error are based upon two grounds:

First—That the logs and lumber involved is property protected from taxation by Article 1, Section 8 of the Constitution of the United States, granting to Congress the power to regulate commerce with foreign nations and among the several States.

Second—That the assessment of taxes upon the said property is in violation of the Fourteenth Amendment of the Constitution of the United States in that it denies the plaintiffs in error the equal protection of the laws.

BRIEF.

I.

There is nothing in the contention of plaintiff in error that the property is protected by the Interstate Commerce clause of the Federal Constitution, for the reason that the logs were not in transit, but had arrived at their destination. They had been manufactured, or were in process of manufacture into articles of various kind, and had become a part of the general property in the State.

American Steel Wire Co. v. Speed, 2 Cates 546.
Austin v. Tennessee, 179 U. S. L. Ed. 224.
Brown v. Houston, 114 U. S. L. Ed. 257.
May v. New Orleans, 178 U. S. L. Ed. 165.
Woodman v. The State, 2 Swan 354.
Machine Co. v. Cage, 9 Baxter 519.
Naff v. Russell, 2 Cold. 36.

II.

The plaintiff in error is a corporation, having its place of business in the city of Memphis. "A corporation is not a citizen within the meaning of the constitutional provisions as to privileges and immunities of citizens."

Orient Ins. Co. v. Daggs, 172 U. S. 557.
Blake v. McClung, 172 U. S. 237.
Paul v. Virginia, 8 Wall. 168, 178.

III.

The plaintiff in error is a Tennessee corporation, engaged in manufacturing, within the State. It is receiving the benefit of the exemption on all articles that it manufactures out of the produce of Tennessee. It is not a case where a citizen of another State is complaining that he is being denied privileges and immunities that are extended to citizens of Tennessee. It is a case where a Tennessee corporation is

not content with the exemption it already has, and is contending for more upon the ground that the State, having exempted articles manufactured of the produce of Tennessee in its hands, it must exempt all articles manufactured of the produce of any other State by it and in its hands. "One who does not belong to the class that might be injured by a statute cannot raise the question of its invalidity."

Red River Nat'l Bank v. Craig, 181 U. S. 548; 189 U. S. 383.
Albany County v. Stanley, 105 U. S. 114.
Lapossa v. Bell, 180 U. S. 527.
"A court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and one who has no interest in defeating it."
Clark v. Kansas City, 176 U. S. 114.

The plaintiff in error is not in a position to question the constitutionality of this exemption.

Castillo v. McConnico, 168 U. S. 680.

IV.

The power of taxation is an incident to soverignty, is essential to the very existence of government, and is so searching in extent that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of such authority as exercises it.

McCulloch v. Maryland, 4 Wheat. (N. S.) 316-428, 4 L. Ed. 579.
Cooley's Constitutional Lim. 678.
State Tax on Foreign Held Bonds, 15 Wall. 300-319, 21 L. Ed. 179.

V.

The purpose of the constitutional exemption was in the interset of home productions and home indus-

tries. The exemptions do not apply alone to citizens of Tennessee. Any person, regardless of his citizenship, can come to Tennessee and get the benefit of them.

> Reymann Brewing Co. v. Briston, 179 U. S. 444.
> American Sugar Refining Co. v. Louisiana, 179 U. S. 89, and cases there cited.
> Williams v. Pears, 179 U. S. 270.

In the case of Blake v. McClung, 172 U. S. 256, the court said:

> "We must not be understood as saying that a citizen of one State is entitled to enjoy, in another State, every privilege that may be given in the latter to its own citizens. There are privileges that may be accorded by a State to its own people, in which citizens of other States may not participate, except in conformities of such reasonable regulations as may be established by the State. It may require a non-resident to give bond for costs, although such bond is not required of a resident. Such a regulation of the internal affairs of a State cannot reasonably be characterized as hostile to the fundamental rights of 'citizens of other States.'" (See also the dissenting opinion of the court, on page 266, upon this point.)

VI.

The power of the State, expressed either in its organic law or by statute to foster industries by providing exemptions from taxation, both to persons and to certain classes of property within its territory, has been repeatedly recognized by the Supreme Court of the United States.

> American Sugar Refining Co. v. Louisiana, 179 U. S. 89-94, 21 Sup. Ct. 43, 45 L. Ed. 102 (Approved in Kidd v. Alabama, 188 U. S. 730, 23 Sup. Ct. 401, 47 L. Ed. 699).

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232, 10 Sup. Ct. 533, 33 L. Ed. 892.
Pacific Express Co. v. Seibert, 143 U. S. 339, 12 Sup. Ct. 250, 35 L. Ed. 1035.
People Ex Rel. Park, Davis & Co. v. Roberts, 171 U. S. 658, 19 Sup. Ct. 58, 43 L. Ed. 323.
Cox and Others v. Texas, 202 U. S. 446, 26 Sup. Ct. 671, 50 L. Ed. 1099.

VII.

It has been held by the Supreme Court of Tennessee repeatedly that non-residents of the State could not avail themselves of the exemption laws of this State, either as to homestead or personalty.

11 Ham. 45.
3 Pickle 83.
4 Pickle 650.
15 Pickle 298.
1 Sneed 50.
14 Lea 370.
12 Pickle 180.
17 Pickle 523.

If the plaintiff in error was an individual and a non-resident of the State, instead of a resident corporation, there would be more force in its contention. The Supreme Court of the United States, in Blake v. McClung, makes this distinction. It says:

> "But it is equally well settled, and we now hold that a corporation is not a citizen within the meaning of the constitutional provisions that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States. The corporation, therefore, cannot invoke that provision for protection. Since, however, a corporation is a person within the meaning of the fourteenth amendment, may not the corporation invoke for its protection the clause of the amendment declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction equal protection of

the law? We are of the opinion that this question must receive a negative answer."

In the above case the court applied one rule to the individual creditors and a different one to the corporation creditors. The case went by writ of error from the Supreme Court of Tennessee.

VIII.

It will be observed that most of the cases cited by plaintiff in error are cases where a license tax had been charged against a non-resident, or where foreign products had been specifically taxed **as such.** See:

Walling v. Mich., 116 U. S. 440.
Weber v. Virginia, 103 U. S. 344.
Welton v. Missouri, 99 U. S. 275.

where these questions are discussed.

The question here is not a tax, but an **exemption from taxation.** The property in question has become amalgamated with the general property in the State in the hands of a resident Tennessee corporation. This is a not a complaint by a **non-resident,** whose rights have been denied, or whose property has been unequally taxed.

We submit that the decree of the Supreme Court of Tennessee should be affirmed.

Respectfully,

WILLIAM H. CARROLL,
THOMAS H. JACKSON,
MARION G. EVANS,
For Defendants in Error.

NOTE—For convenient reference the opinion of the Supreme Court of Tennessee is printed as an addendum to this brief.

I. M. DARNELL & SON COMPANY

vs.

CITY OF MEMPHIS ET AL.

JACKSON, APRIL TERM, 1906.

---

1. **TAXATION. Property imported from other States into this State is subject to the tax laws of this State, and is not exempt as interstate commerce when**

Lumber logs imported from another State, and lying in the importer's millyard in this State awaiting manufacture into lumber or already manufactured into lumber and awaiting sale, have become commingled with and merged into the mass of general property of this State, and have become subject to the tax laws of this State, and are not protected from State taxation by the interstate commerce clause of the constitution of the United States.

Post. pp. 426-430.

Constitution of the United States cited and construed: Art. 1, Sec. 8.

Cases cited and approved:

Steel & Wire Co. v. Speed, 110 Tenn. 524-546.
Woodruff v. Parham, 8 Wall. 123.
Brown v. Houston, 114 U. S. 622.
Emert v. Missouri, 156 U. S. 296.
May v. New Orleans, 178 U. S. 496.
Steel & Wire Co. v. Speed, 192 U. S. 500.
Kehrer v. Stewart, 197 U. S. 60-65.

2. **SAME. Same. State taxation of such property is not a denial of the equal protection of the laws.**

Under our constitutional and statutory exemption from taxation of the direct product of the soil in the hands of the producer and his immediate vendee and of articles manufactured of the produce of this State, a tax on lumber logs imported from another State into this State by a domestic corporation, and lying in the importer's millyard awaiting manufacture into lumber, or already manufactured into lumber and awaiting sale, is not violative of the fourteenth amendment to the constitution of the United States, as a denial of the equal protection of the laws.

Post, pp. 426, 430-444.

Acts cited and construed: 1903, Ch. 258, Secs. 1 and 2.

Constitution cited and construed: Art. 2, Secs. 28, 29 and 30.

Constitution of the United States cited and construed: Art. 1, Sec. 8, 14th Am.

Cases cited and approved:

State v. Crawford, 2 Head 461.
Naff v. Russell, 2 Cold. 36.
Kurth v. State, 86 Tenn. 136.
Benedict v. Davidson Co., 110 Tenn. 191.
McCulloch v. Maryland, 4 Wheat. 316-428.
Bond Case, 15 Wall. 300-319.
Tiernan v. Rinker, 102 U. S. 123.
Barbier v. Connolly, 113 U. S. 27-31.
Walling v. Michigan, 116 U. S. 446.
Railroad v. Pennsylvania, 134 U. S. 232.
Express Co. v. Seibert, 143 U. S. 339.
People ex rel. v. Roberts, 17 U. S. 658.
Dewey v. Des Moines, 173 U. S. 193-198.
Bridge Co. v. Ilinois, 175 U. S. 626-633.
Refining Co. v. Louisiana, 179 U. S. 89-94.
Insurance Co. v. Connecticut, 185 U. S. 364.
Kidd v. Alabama, 188 U. S. 730.
Railroad v. Powers, 201 U. S. 543.
Cox v. Texas, 202 U. S. 446.

FROM SHELBY.

Appeal from the Chancery Court of Shelby county. F. H. Heiskell, Chancellor.

C. H. Trimble, H. B. Anderson and Metcalf, Minor & Metcalf, for Complainant.

Thos. H. Jackson, City Attorney, for Memphis.
Attorney General Cates, for the State.*

Mr. Justice Shields delivered the opinion of the court.

This suit was instituted to determine the validity of an assessment of certain personal property of complainant by the proper officials of defendant city of Memphis. No question is made upon the regularity of the assessment, but complainant, a Tennessee corporation, domiciled in Memphis and engaged in the business of manufacturing lumber and selling its manufactured product, after admitting liability for taxes upon part of its personal property, averred that it is the owner of certain other personal property upon which an assessment had been made which consists of "logs cut from the soil of States of the Union other than Tennessee, and in the hand of complainant as the first vendee awaiting manufacture into lumber, or lumber already manufactured by complainant from logs of the character first stated, and lying in complainant's millyard awaiting sale," and the validity of the assessment of this property complainant challenged upon the following grounds:

*The State was not a formal party to this case, but, because of the interest of the State in the result, the Attorney-General, by direction of the court, filed a brief on the questions involved.—Reporter.

First—Said property is protected from taxation by the commerce clause of the Federal constitution (article 1, section 8), giving to Congress power to regulate commerce with foreign nations and among the several States, etc.

Second—That the assessment of a tax upon the property in question is a denial to complainant of the equal protection of the laws, and is therefore in contravention of the fourteenth amendment to the constitution of the United States.

The constitution of Tennessee (article 2) among other things provides:

> "Sec. 28. All property, real, personal or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars' worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value, but the Legislature shall have power to tax merchants, peddlers and privileges in such manner as they may from time to time direct. The portion of the merchant's capital used in the purchase of merchandise sold by him to non-residents and sent beyond the borders of the State shall not be taxed at a higher rate than the ad valorem tax on property. The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed

ad valorem. All male citizens of this State, over the age of twenty-one years, except such persons as may be exempt by law on account of age or other infirmity, shall be liable to poll tax of not less than fifty cents nor more than one dollar per annum, nor shall any county or corporation levy poll taxes exceeding the amount levied by the State.

Sec. 29. The General Assembly shall have power to authorize the several counties and incorporated towns of this State to impose taxes for county and municipal purposes, respectively, in such manner as shall be prescribed by law; all property shall be taxed according to its value upon the principles established in regard to State taxation.

Sec. 30. No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."

Section 30, above quoted, originated with the first constitution of this State, adopted on February 6, 1796, and hence formed a part of the fundamental law of the State when it was admitted by the act of Congress approved June 1, 1796.

The act of the General Assembly under which the tax in question was assessed is Chapter 258, page 632, of the Acts of 1903, which, in respect of the matters involved in this case, substantially reproduces under the mandate of the constitution the rules and principles of taxation in force in this State for nearly an hundred years.

Said act is entitled "An act to provide more just and equitable laws for the assessment and collection of revenue for State, county and municipal purposes," etc., and provides:

"Sec. 1. That all property, real, personal and mixed, shall be assessed for taxation for State, county and municpal purposes, except such as is declared exempt in the next section.

> Sec. 2. That the property herein enumerated, and none other, shall be exempt from taxation * * * Sub.-sec. 5. All growing crops of whatever nature and kind, the direct product of the soil of this State in the hands of the producer and his immediate vendee, and manufactured articles from the produce of the State in the hands of the manufacturer."

The contention of the complainant, upon the facts stated, that the tax upon the property in question was a burden upon commerce between the States and a denial of the equal protection of the laws, was challenged by demurrer, which was overruled by the chacellor, and thereupon an appeal was prayed and granted to this court.

We are of the opinion that both contentions insisted upon by complainant are without merit and cannot be sustained.

1. Upon the averments of the bill it is manifest that, although the property sought to be taxed was purchased by complainant in and brought from another State, nevertheless it had become divested of any connection with commerce between the States and was at rest, commingled with and merged into the general mass of property of this State, awaiting sale to purchasers.

Although the origin of property may be in another State, nevertheless, when it is brought into this State and here merged into the mass of general property, it at once becomes subject to the tax laws of this State.

> American Stel & Wire Co. v. Speed, 110 Tenn. 524-546, 75 S. W. 1037, 100 Am. St. Rep. 814.

This principle was recognized and the holding of this court affirmed by the Supreme Court of the United States (American Steel & Wire Co. v. Speed,

192 U. S. 500, 24 Sup. Ct. 365, 48 L. Ed. 538), and is in harmony with other adjudications of that court (Woodruff v. Parham, 8 Wall. (U. S.) 123, 19 L. Ed. 382; Brown v. Houston, 114 U. S. 622, 5 Sup. Ct. 1901, 29 L. Ed. 257; May v. New Orleans, 178 U. S. 496, 20 Sup. Ct. 976, 44 L. Ed. 1165; Emert v. Missouri, 156 U. S. 296, 15 Sup. Ct. 367, 39 L. Ed. 430).

In Kehrer v. Stewart, 197 U. S. 60-65, 25 Sup. Ct. 403, 49 L. Ed. 663, the Supreme Court of the United States, in substance, declared that it can make no difference whence the property came or to whom it should be ultimately sold, because upon its arrival in the State where it is offered for sale and intermingled with the general property of the State, it becomes and is a part of the taxable property of the State.

2. The contention of the complainant that the assessment and taxation of the property in question denies to him the equal protection of the laws is based upon its construction of the holding of this court in the case of Benedict v. Davidson County, 110 Tenn. 191, 67 S. W. 806, that under section 30 of article 2 of the constitution of the State of Tennessee, all logs when cut from Tennessee soil and lumber made therefrom are exempt in the hands of the manufacturer owning the same, and that therefore the State of Tennessee, by exempting such property from taxation, has precluded itself from taxing logs taken from the soil of other States, or lumber manufactured therefrom, for the reason that, as stated in its brief, a State may not "under the Federal constitution discriminate in favor of the products of its own soil or in favor of its own citizens, as against the products of the soil of other States, or against citizens of other States."

It is among other things insisted on behalf of appellant city of Memphis:

That the contention of complainant is not aided by the decision in Benedict v. Davidson County, supra, when considered in connection with and construed in the light of the repeated adjudications of this court to the effect that the exemption obtained only in favor of products of this State, manufactured in it, and while in the hands of the manufacturer (State v. Crawford, 2 Head 461; Naff v. Russell, 2 Cold. 36; Kurth v. State, 86 Tenn. 136, 5 S. W. 593), which were not intended to be either overruled or weakened by the decision in Benedict v. Davidson County. But we do not deem it necessary, at this time, to determine the scope or effect of the case of Benedict v. Davidson County, and proceed to examine the graver question whether, conceding the construction insisted upon by complainant, the people of the State of Tennessee were without power to ordain and provide for the exemption, under certain conditions, of property within its borders from taxation.

In this connection it must be borne in mind that this record does not present a question of discrimination between citizens of different States. Complainant is a corporation brought into life and having its existence solely under and by virtue of the laws of this State, and, pretermitting the question of interstate commerce, its contention, when analyzed, is not that the State is without power to subject all property within her borders to taxation for public purposes, but that its property, purchased in another State and brought here and merged into and become a part of the general mass of property in this State, should not be taxed because the organic law of

the State exempts articles manufactured from the produce of the State.

To arrive at a correct solution of this question, it is proper to consider what rights the sovereign State has in respect to taxation, and whether, or to what extent, such rights were abridged by the fourteenth amendment to the constitution of the United States.

The power of taxation is an incident to sovereignty, and, as said by Chief Justice Marshall in the case of McCulloch v. Maryland, 4 Wheat. (U. S.) 316-428, 4 L. Ed. 579:

> "The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government shall choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax the legislature acts upon its constitutents. This is, in general, a sufficient security against erroneous and oppressive taxation. The people of a State thereby give to their government a right of taxing themselves and their property, and, as the exigencies of government cannot be limited they prescribe no limits to the exercise of this right, resting confidently upon the interests of the legislator and upon the influence of the constituents over their represenstatives to guard them against this abuse."

Or, as said by Judge Cooley:

> "The power to impose taxes is one so unlimited in force and so searching in extent that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of such authority as exercises it. It reaches to every trade and occupation, to every object of industry, use or enjoy-

> ment, to every species of possession, and it imposes a burden which, in case of failure to discharge it, may be followed by seizure or sale, or confiscation, of property. No attribute of sovereignty is more pervading, and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it."
>
> Cooley's Constitutional Limitations, 678.

As was said by Mr. Justice Field, in "State Tax on Foreign Held Bonds," 15 Wall. 300-319, 21 L. Ed. 179:

> "It may touch property in every shape—in its natural condition, in its manufactured form and in its varying transmutations. * * * It may touch business in the almost infinite forms in which it is conducted—in professions, in commerce, in manufactures, in transportation. Unless restrained by provisions of the Federal constitution the power of the State as to the mode, form and extent of taxation is unlimited."

Such was the power inherent in the sovereign people of Tennessee when they met in convention in 1796 and framed a constitution for their government and for the protection of all persons and property within her borders.

In this constitution it was ordained that articles manufactured from the produce of the State should be exempt from taxation. This was the constitution presented to the Federal Congress when Tennessee was admitted into the Union. It has been the law of the land, governing all people and controlling all property within her borders, for more than a century.

Without question this wise provision placed by the people of the State in the fundamental law of the land, has been enforced for the general good, the pro-

tection of her own property, and the upbuilding of manufacturing industries within her borders.

But now it is insisted that under the fourteenth amendment to the Federal constitution this salutary provision may not be enforced without denying to a citizen of the State, who is a general manufacturer of and dealer in the products of this and other States, the equal protection of the law.

There is no inhibition upon complainant, or any other citizen of the State, from dealing in the products of this State, or manufacturing articles from the produce of the State. The law is general in its operation. We are unable to see wherein, by virtue of the fourteenth amendment to the Federal constitution, complainant is denied the equal protection of the law. It is not written into said amendment that the States may not classify property or accord different treatment to different classes of property. There is nothing in the amendment requiring taxes to be equal and uniform (Travelers' Ins. Co. v. Connecticut, 185 U. S. 364, 22 Sup. Ct. 673, 46 L. Ed. 949), and it has been uniformly held that a State may classify the objects of legislation so long as its attempted classification is not clearly arbitrary and unreasonable.

Taking into consideration the purpose and object of the fourteenth amendment, and the construction placed thereon by the Supreme Court of the United States, the ultimate arbiter of the meaning, scope and effect of said amendment, we are of the opinion that the general powers of taxation, inherent in every government and vested in this State, were neither impaired nor narrowed by said amendment.

In the case of Barbier v. Connolly, 113 U. S. 27-31, 5 Sup. Ct. 357, 28 L. Ed. 923, Mr. Justice Field, in

discussing the general purposes and scope of the fourteenth amendment, among other things said:

> "The fourteenth amendment, in declaring that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the employment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and their property, the prevention and redress of wrongs, and enforcement of contracts; that no impediment should be imposed to the pursuits of any one, except as applied to the same pursuits by another in like circumstances; that no greater burdens should be laid upon the same calling and condition; and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as ascribed to all for like offenses.
>
> But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes called the 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its health and prosperity."

And in response to the insistence that certain corporations in the State of Pennsylvania were being unlawfully discriminated against by the assesment of a tax of three mills upon the nominal or face value

of their bonds, while other property was assessed at its actual value, Mr. Justice Bradley said:

> "The provision in the fourteenth amendment that no State shall deny to any person within its jurisdiction equal protection of the laws was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. We think we are safe in saying that the fourteenth amendment was not intended to compel the States to adopt an iron rule of equal taxation. If that were its proper construction it would not only supersede all these constitutional provisions and laws of some of the States whose object is to secure equality of taxation and which are usually deemed material, but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needful and useful industries and the discouragement of intemperance and vice, which every State, in one form or another, deems it expedient to adopt."
>
> Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 10 Sup. Ct. 533, 33 L. Ed. 892.

Upon this general question, our attention has been called to the opinion of the Supreme Court of the United States, recently delivered in the case of Michigan Central R. Co. v. Powers, 201 U. S. 543, 26 Sup. Ct. 459, 50 L. Ed. —, wherein Mr. Justice Brewer, reaffirming the general principle hereinbefore enunciated, said:

> "We have had frequent occasion to consider questions of State taxation in the light of the Federal constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign, both as to objects and methods."

In harmony with these principles, the Supreme Court of the United States has repeatedly recognized

the power of the State, expressed either in its organic law or legislative enactments, to foster industries by providing exemptions from taxation, both to persons and certain classes of property within its borders. The exemption laws of the several States, which operate only in favor of citizens of any property in the State, when assailed, have invariably been sustained, and are not longer questioned.

We will refer to a few of these. In American Sugar Refining Co. v. Louisiana, 179 U. S. 89-94, 21 Sup. Ct. 43, 45 L. Ed. 102 (approved in Kidd v. Alabama, 188 U. S. 730, 23 Sup. Ct. 401, 47 L. Ed. 669), the Supreme Court of the United States held that a manufacturer engaged in the business of refining sugar is not denied the equal protection of the laws because of the discrimination made in the constitution of Louisiana, imposing a license tax upon manufacturers engaged in said business, but exempting from the tax those who refined the products of their own plantations.

In this case Mr. Justice Brown said:

> "The power of taxation under this provision was fully considered in Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232, 10 Sup. Ct. 533, 33 L. Ed. 892, in which it was said not to have been intended to prevent a State from changing its system of taxation in all proper and reasonable ways. It may, if it choose, exempt certain classes of property altogether, it may impose different specific taxes upon different trades or professions, may vary the rates of excise upon various products, may tax real and personal estate in a different manner, may tax visible property and not securities, and may allow or not allow deductions for indebtedness. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the

State legislature or the people of the State in framing their constitution."

And further said Mr. Justice Brown:

"The constitution of Louisiana classifies the refiners of sugar for the purpose of taxation into those who refine the products of their own plantations and those who engage in a general refining business, imposing a tax only upon the latter class. To entitle a party to the exemption it must appear (1) that he is a farmer or planter; (2) that he grinds all cane, as well as refines the sugar and molasses; (3) that he refines his own sugar and molasses, meaning thereby the product of his own plantation. Whether he may also refine the sugar of others may be open to question, although by its express terms the act does not apply to planters who refine syrup for other planters. The discrimination is obviously an encouragement to agriculture and does not deny to persons and corporations who are in a general refining business the equal protection of the laws."

In Pacific Express Co. v. Seibert, 143 U. S. 339, 12 Sup. Ct. 250, 35 L. Ed. 1035, the Supreme Court of the United States held that a State statute, defining an express company to be such as carried on the business of transportation on trucks for hire with railroad or steamboat companies, did not discriminate against the express companies defined by it by exempting other companies carying express matter in vehicles of their own.

In the case of People ex rel. Park, Davis & Co. v. Roberts, 171 U. S. 658, 19 Sup. Ct. 58, 43 L. Ed. 323, the right of the State to classify the objects of taxation and to make reasonable discriminations in favor of domestic property and manufacturers was sustained, and it was held that the equal protection of the laws is not denied to a foreign corporation which manufactures goods in other States and sends them into the State for sale by a tax on the amount

of capital employed by it within the State, because of an exemption of corporations which are wholly engaged in manufacturing within the State, when the State makes no discrimination between foreign and domestic corporations.

The last decision of the Supreme Court of the United States, to which we have had access, is that of Cox and Others v. Texas, 202 U. S. 446, 26 Sup. Ct. 671, 50 L. Ed. 1099, decided on May 21, 1906, and in which the opinion was delivered by Mr. Justice Holmes.

In that case it was contended by Cox, a liquor dealer, that he was denied the equal protection of the law and unreasonably discriminated against in the matter of a license tax which was imposed upon him, a general dealer in liquors, when no such tax was imposed upon or applicable to wines produced from grapes grown in the State.

In delivering the opinion of the court, Mr. Justice Holmes, among other things, said:

> "It is true that there is granted to the producers and manufacturers of wine from grapes grown in Texas an immunity not received and which is not granted to other sellers of the same wine. To that extent, but to that extent alone, favor is shown to a class. But it is not the class discrimination put forward and insisted upon. The attack is not mainly on the distinction between producers and other sellers of domestic wine, but upon that between those producers and the sellers of other wine. The latter, as we have said, is not a true class distinction. Whether there is a difference in the scope of a State's general power to legislate and its power to tax or not, the former does not need any extended defense, as far as the fourteenth amendment alone is concerned (citing authorities). * * * The truth is that the fourteenth amendment does not touch the case standing alone, and if so

other provisions of the constitution which were not invoked cannot be brought in now under cover of the reference to the fourteenth amendment to give the latter a more extensive application to the case than it would have when taken by itself. If the States were restricted by the fourteenth amendment only, and saw fit to encourage domestic protection, or thought to promote temperance, or to help secure better wine by statutes such as those before us, there would be nothing to hinder them. If the statutes are open to objection as improperly interfering with commerce between the States (Tiernan v. Rinker, 102 U. S. 123, 26 L. Ed. 103; Walling v. Michigan, 116 U. S. 446, 6 Sup. Ct. 454, 29 L. Ed. 691), the right which comes from section 6 of article 1 of the constitution cannot be used to enlarge, for the purpose of this case, the privileges and immunities of an equal protection of the laws secured by the fourteenth amendment. Dewey v. Des Moines, 173 U. S. 193-198, 19 Sup. Ct. 379, 43 L. Ed. 665. The converse of a right set up under article 1, section 8, and at attempt to support it by the fourteenth amendment, was decided in Keokuk & Hamilton Bridge Co. v. Illinois, 175 U. S. 626-633, 20 Sup. Ct. 205, 44 L. Ed. 299."

The distinction between the effect of the interstate commerce clause of the Federal constitution and the scope and operation of the fourteenth amendment is here sharply drawn and soundly stated. All the cases relied upon to sustain the contention of complainant are predicated upon the commerce clause, and not the fourteenth amendment, to the Federal constitution.

This is clearly recognized by Mr. Justice Holmes in Cox et al. v. Texas, supra, in his reference to the cases of Tiernan v. Rinker and Walling v. Michigan, and we are of the opinion that the Supreme Court of the United States, in using the language

hereinbefore referred to, to the effect that the power of the State as to the mode, form and extent of objects of taxation is unlimited, except as restrained by the provisions of the Federal constitution, referred to inhibitions upon the taxing powers of the State by other clauses of the Federal constitution, such as duties on imports and exports, taxes on government bonds and other securities, and not to any inhibition born of the fourteenth amendment. Does it not follow that where the people, in their organic law, have prescribed rules for levying taxes and designated the objects which shall be subject to or exempt from taxation, that, so long as the mandate of this supreme law of the State is observed, there can be no denial of the equal protection of the law, unless the law so invoked is one emanating from another sovereignty, one paramount to the State, to which the people of the State have delegated or upon which they have conferred supreme power in respect of the subject matter of the particular thing in question? Therefore, conceding that the State may not burden or in any way interfere with transactions or property so long as they relate to or are the subjects of commerce between the States, nevertheless, when such transactions are divested of their interstate character and the property has ceased to be a part of commerce between the States, or to have any connection therewith, and has become merged into and a part of the general mass of property in the State, there can be no denial of the equal protection of the supreme law, prohibiting interference with or the placing of burdens upon commerce between the States, for the reason that the Federal constitution no longer operates upon such transactions or pro-

tects such property from the taxing power of the State.

From these conclusions it results that the decree of the chancellor, granting the complainant relief, must be reversed, the demurrer of the defendants sustained, and the bill dismissed, with costs.

I. M. DARNELL & SON COMPANY v. CITY OF MEMPHIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

No. 75. Argued December 16, 1907.—Decided January 20, 1908.

While a State may tax property which has moved in the channels of interstate commerce after it is at rest within the State and has become commingled with the mass of property therein, it may not discriminate against such property by imposing upon it a burden of taxation greater than that imposed upon similar domestic property.

The exemption from taxation in ch. 258 of the acts of Tennessee of 1903, of growing crops and manufactured articles from the produce of the State, in the hands of the manufacturer, is a discrimination against similar property, the product of the soil of other States, brought into that State, and is therefore a direct burden upon interstate commerce and repugnant to the commerce clause of the Constitution of the United States.

Quære, and not decided, whether such provision of exemption is valid under the equal protection clause of the Fourteenth Amendment.

116 Tennessee, 424, reversed.

THE facts are stated in the opinion.

Mr. Dent Minor, with whom *Mr. C. W. Metcalf*, *Mr. C. H. Trimble* and *Mr. H. B. Anderson* were on the brief, for plaintiffs in error:

Logs in the hands of a manufacturer awaiting conversion into lumber and the lumber made therefrom in the hands of the same manufacturer are within the exemptions of the Tennessee constitution, when cut from Tennessee soil. *Benedict* v. *Davidson Co.*, 110 Tennessee, 191.

By exempting from taxation such property when taken from its own soil, the State has precluded itself from taxing similar property taken from the soil of other States, as a State may not, under the Federal Constitution, so discriminate in favor of the products of its own soil as against the products or against citizens of other States. *Welton* v. *Missouri*, 91 U. S. 275; *Walling* v. *Michigan*, 116 U. S. 446.

A Tennessee corporation or citizen is as much entitled to complain of the discrimination just mentioned as a foreign corporation or a non-resident. The evil complained of is the discrimination against persons handling property from other States and affects domestic and foreign corporations alike.

The complainant, a corporation, while not a citizen, is a "person" within the meaning of the state and Federal Constitutions and is entitled to the protection guaranteed to persons by the Fourteenth Amendment. *Dugger* v. *Ins. Co.*, 95 Tennessee, 250; *Railway Co.* v. *Mackay*, 127 U. S. 205; *Santa Clara* v. *Railway*, 118 U. S. 394.

Mr. Marion G. Evans, with whom *Mr. William H. Carroll* and *Mr. Thomas H. Jackson* were on the brief, for defendants in error:

The property is not protected by the interstate commerce clause, as it was not in transit, but had arrived at its destination. It had been manufactured, or was in process of manufacture into articles of various kinds, and had become a part of the general property in the State. *American Steel Wire Co.* v. *Speed*, 110 Tennessee, 546; *Austin* v. *Tennessee*, 179 U. S. 343; *Brown* v. *Houston*, 114 U. S. 622; *May* v. *New Orleans*, 178 U. S. 496; *Woodman* v. *The State*, 2 Swan, 354; *Machine Co.* v. *Cage*, 9 Baxter, 519; *Naff* v. *Russell*, 2 Cold. 36.

It will be observed that most of the cases cited by plaintiff in error are cases where a license tax had been charged against a non-resident, or where foreign products had been specifically taxed as such. See *Walling* v. *Michigan*, 116 U. S. 446; *Weber* v. *Virginia*, 103 U. S. 344; *Welton* v. *Missouri*, 91 U. S. 275, where these questions are discussed.

The question here is not a tax, but an exemption from taxation. The property in question has become amalgamated with the general property in the State in the hands of a resident Tennessee corporation. This is not a complaint by a non-resident, whose rights have been denied, or whose property has been unequally taxed.

MR. JUSTICE WHITE delivered the opinion of the court.

Article 2 of the Tennessee constitution of 1870 provides:

"SEC. 28. All property, real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held or used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars' worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer and his immediate vendee.

* * * * * * * *

"SEC. 30. No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees."

By chapter 258, p. 632, of the acts of Tennessee for 1903 it was, among other things, provided:

"SEC. 1. That all property, real, personal and mixed, shall be assessed for taxation for State, county and municipal purposes, except such as is declared exempt in the next section.

"SEC. 2. That the property herein enumerated, and none other, shall be exempt from taxation. . . . Sub-sec. 5. All growing crops of whatever nature and kind, the direct product of the soil of this State in the hands of the producer and his immediate vendee, and manufactured articles from the produce of the State in the hands of the manufacturer."

In the recent case of *Benedict* v. *Davidson County*, 110 Tennessee, 183, 191, the Supreme Court of Tennessee held as follows:

"We are of opinion that, under the facts in this record, the logs upon the yard, in the hands of the mill-operating manufacturer and his property, and lumber, rough and smooth, cut by him from such logs grown on Tennessee soil, are articles manufactured from the produce of the State, and exempt under the provisions of section 30, article 2, of the constitution; and the demurrer was therefore properly overruled, and complainants, under the allegations of their bill, are entitled

to recover back the taxes paid the State, and to perpetually enjoin the taxes assessed by the county and city."

For more than three years prior to January 30, 1905, the I. M. Darnell & Son Company, a corporation of Tennessee, was domiciled in Memphis, in that State, and there owned and operated a lumber mill. Shortly prior to the date just named, pursuant to chapter 366 of the acts of Tennessee for 1903 (Acts Tenn., 1903, pp. 1097–1101), the value of the personalty of the Darnell Company was assessed for taxation by the city of Memphis at $44,000. Of this amount $19,325 was the value of logs cut from the soil of States other than Tennessee, which the company had brought into Tennessee from other States and were held by the company as the immediate purchaser or vendee awaiting manufacture into lumber, or consisted of lumber already manufactured by the company from logs which had been acquired and brought into the State from other States, as above mentioned, and all of which lumber was lying in the mill yard of the company awaiting sale. The Darnell Company protested against this assessment, asserting that it was not liable to be taxed on said sum of $19,325, the value of the property owned by it as the immediate purchaser of logs brought from other States, or lumber, the product thereof. The ground of the protest was that the property represented by the valuation in question could not be taxed without discriminating against it, as like property, the product of the soil of Tennessee, was exempt from taxation under the constitution and laws of that State, and therefore to tax its said property would violate the commerce clause, section 8, Article I, of the Constitution and the equal protection clause of the Fourteenth Amendment.

The protest was overruled. Thereupon threat of distress and sale was made by the collecting officer, unless the taxes on all the property were paid. On January 30, 1905, the Darnell Company filed in the Chancery Court of Shelby County its bill against the city of Memphis and the collecting officer to enjoin the enforcement of the tax as to the logs brought in from other

States, and the lumber, the product thereof as above stated, on the ground of the repugnancy of the tax to the commerce clause and the Fourteenth Amendment, because of the foregoing alleged discrimination. At the same time it paid into court the amount of the taxes which were not in dispute. The sufficiency of the bill was challenged by demurrer, asserting in substance that the assessment complained of did not constitute an unlawful discrimination and was not repugnant either to the constitution of Tennessee or of the United States. Subsequently, by leave of court, an additional demurrer was filed, which, in effect, asserted that, as the plaintiff company was a citizen of Tennessee, it could not be heard to complain of the tax, and that the enforcement of the same was not repugnant to the Fourteenth Amendment, and that as the property sought to be taxed was not in transit or awaiting shipment out of the State, but on the contrary had reached its destination and was in the hands of the consignee and owner, who was a citizen of Tennessee, and had become a part of the general property of the State, the assessing of the same for taxation was not an interference with commerce between the States. The chancellor overruled the demurrer and decided the case in favor of the Darnell Company, because the court, as stated in the decree, was of the opinion "that the tax in controversy is in contravention of the rights of complainant as guaranteed by the Constitution of the United States, and particularly the interstate commerce clause thereof, and the Fourteenth Amendment thereof, as set out in the complainant's original bill."

On appeal the Supreme Court of Tennessee, in considering the demurrer, held the disputed tax not to be repugnant to the Constitution of the United States, and reversed the decree of the Chancery Court. 116 Tennessee, 424. The court entered a decree against the Darnell Company and H. D. Minor, the surety on the appeal bond, for the amount of the disputed tax, penalty and interest. The company and Minor prosecute this writ of error.

As all the assignments of error relied on for reversal are but the counterpart of the reasons which led the court below to the conclusion that the tax was not repugnant to the Constitution of the United States, we come at once to consider the affirmative conceptions on that subject expressed in the opinion of the court below, as affording the most direct method of disposing of the issues for decision. Those conceptions are of a twofold character, one relating to the commerce clause and the other to the equal protection clause of the Fourteenth Amendment.

The court in its opinion conceded that the property embraced in the assessment complained of was purchased by the complainant in and brought from other States, or consisted of lumber produced from logs so brought into Tennessee, and that property of like character would not be subject to taxation under the state law if it had been produced from the soil of Tennessee. But the levy of the tax was held not to be a direct burden upon interstate commerce, and hence not repugnant to the commerce clause of the Constitution of the United States, as a result of the interpretation which the court affixed to previous decisions of this court concerning the operation of the commerce clause of the Constitution and the right of a State to impose a tax, even if discriminatory in character, upon property coming from other States, after such property had come at rest within a State and been commingled with the mass of property therein. The court, after stating that the provision of the state constitution which authorized the exemption of property produced from the soil of Tennessee had its inception in the "first constitution of this State, adopted on February 6, 1796, and hence formed a part of the fundamental law of the State, when it was admitted by the act of Congress, approved June 1, 1796, ch. 67, 1 Stat. 491," proceeded to state its reasons for holding that the discriminatory tax was not repugnant to the commerce clause, as follows (p. 429):

"1. Upon the averments of the bill it is manifest that, although the property sought to be taxed was purchased by

complainant in and brought from another State, nevertheless it had become divested of any connection with commerce between the States and was at rest, commingled with and merged into the general mass of property of this State, awaiting sale to purchasers.

"Although the origin of property may be in another State, nevertheless, when it is brought into this State and here merged into the mass of general property, it at once becomes subject to the tax laws of this State. *American Steel & Wire Co.* v. *Speed*, 110 Tennessee, 524–546, 75 S. W. Rep. 1037, 100 Am. St. Rep. 814.

"This principle was recognized and the holding of this court affirmed by the Supreme Court of the United States (*American Steel & Wire Co.* v. *Speed*, 192 U. S. 500), and in harmony with other adjudications of that court. *Woodruff* v. *Parham*, 8 Wall. 123; *Brown* v. *Houston*, 114 U. S. 622; *May* v. *New Orleans*, 178 U. S. 496; *Emert* v. *Missouri*, 156 U. S. 296.

"In *Kehrer* v. *Stewart*, 197 U. S. 60, 65, the Supreme Court of the United States, in substance, declared that it can make no difference whence the property came or to whom it should be ultimately sold, because upon its arrival in the State where it is offered for sale and intermingled with the general property of the State, it becomes and is a part of the taxable property of the State."

As we are of opinion that the question for decision is clearly foreclosed by prior decisions of this court, which demonstrate that the court below misconceived the rulings of this court upon which it relied, we do not stop to analyze the reasoning of the court considered as an original proposition, but come at once to test its correctness by making a brief review of the decided cases relied upon by the court below and others not referred to which relate to the subject, and which are controlling.

As a prelude to a review of the cases referred to, we observe that while it is undoubted that it has been settled that where property which has moved in the channels of interstate com-

merce is at rest within a State and has become commingled with the mass of property therein it may be taxed by such State without thereby imposing a direct burden upon interstate commerce, that doctrine, as expounded in the decided cases, including those relied upon by the court below, has always expressly excluded the conception that a State could, without directly burdening interstate commerce, discriminate against such property by imposing upon it a burden of taxation greater than that levied upon domestic property of a like nature.

The leading cases announcing the doctrine that a State may tax property which had moved in the channels of interstate commerce, when such property had become at rest therein, even before sale in the original package, are *Woodruff* v. *Parham*, 8 Wall. 123, and *Brown* v. *Houston*, 114 U. S. 622. But in both those cases it was sedulously pointed out that the power which was thus recognized did not, and could not, include the authority to burden the property brought from another State with a discriminating tax. In *American Steel Wire Co.* v. *Speed*, 192 U. S. 500, 519, where the doctrine of *Woodruff* v. *Parham* and *Brown* v. *Houston* was reviewed and restated, it was pointed out that to prevent the levy of a tax upon property brought from another State, even after it had come at rest within a State, from being a direct burden upon interstate commerce, property so situated must be taxed "without discrimination, like other property situated within the State."

The statements just made adequately point out the misconception as to the rulings of this court upon which the court below placed its conclusion, since the court took no heed of the express declaration concerning the nullity of any discriminating tax made in the cases which the court relied on. The importance of the subject, however, and the statement made by the court below as to the long existence in Tennessee of the tax exemption in favor of the products of the soil of Tennessee, leads us to a brief review of other decided cases in this court which have long since clearly established the want

of power in a State to discriminate by taxation in any form against property brought from other States.

In *Guy* v. *Baltimore*, 100 U. S. 434, the invalidity was adjudged of a municipal ordinance of the city of Baltimore which established rates of wharfage to be charged on vessels resorting to or lying at, "landing, depositing or transporting goods or articles other than the productions of this State, on any wharf or wharves belonging to said mayor and city council, or any public wharf in the said city, other than the wharves belonging to or rented by the State." The principle, settled by earlier decisions, which were referred to (*Woodruff* v. *Parham*, 8 Wall. 123; *Hinson* v. *Lott*, 8 Wall. 148, and *Ward* v. *Maryland*, 12 Wall. 418), was reaffirmed, the court saying (pp. 439, 442):

"In view of these and other decisions of this court, it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several States be materially abridged and impaired.

* * * * * * * *

"The State, it will be admitted, could not lawfully impose upon such cargo any direct public burden or tax because it may consist, in whole or in part, of the products of other States. The concession of such a power to the States would render wholly nugatory all National control of commerce among the States, and place the trade and business of the country at the mercy of local regulations, having for their object to secure exclusive benefits to the citizens and products

of particular States. But it is claimed that a State may empower one of its political agencies, a mere municipal corporation representing a portion of its civil power, to burden interstate commerce by exacting from those transporting to its wharves the products of other States wharfage fees, which it does not exact from those bringing to the same wharves the products of Maryland. The city can no more do this than it or the State could discriminate against the citizens and products of other States in the use of the public streets or other public highways."

In *Webber* v. *Virginia*, 103 U. S. 344, a license statute of the State of Virginia was held to be a regulation of commerce and invalid because the tax was made to depend upon the foreign character of the articles dealt in; that is, upon their having been manufactured without the State. The court said (p. 350):

"If by reason of their foreign character the State can impose a tax upon them or upon the person through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the introduction of the foreign article and prevent competition with the home product. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several States."

In *Walling* v. *Michigan*, 116 U. S. 446, an act of the State of Michigan, which imposed a tax or duty on persons who, not having their principal place of business within the State, engaged in the business of selling, or of soliciting the sale of certain described liquors, to be shipped into the State, was held to be repugnant to the commerce clause, as being "a discriminating tax levied against persons for selling goods brought into the State from other States or countries." The court said (p. 455):

"A discriminating tax imposed by a State operating to the

disadvantage of the products of other States when introduced into the first-mentioned State is, in effect, a regulation in restraint of commerce among the States, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States."

And in the course of the opinion, referring to state decisions announcing a want of authority in the several States to prescribe different regulations in relation to the commerce in certain articles, dependent upon the State from which they were brought, the court thus referred to a decision of the Supreme Court of Missouri (p. 457):

"In *State* v. *North*, 27 Missouri, 464, where an act of Missouri imposed a tax upon merchants for all goods purchased by them, except such as might be the growth, produce, or manufacture of that State, and manufactured articles, the growth or produce of other States, it was held by the Supreme Court of that State that the law was unconstitutional and void. The court says: 'From the foregoing statement of the law and facts of this case it will be seen that it presents the question of the power of the States, in the exercise of the right of taxation, to discriminate between products of this State and those manufactured in our sister States.' And after an examination of the causes which led to the adoption of the Federal Constitution, one of the principal of which was the necessity for the regulation of commerce and the laying of imposts and duties by a single government, the court says: 'But, whatever may be the motive for the tax, whether revenue, restriction, retaliation or protection of domestic manufactures, it is equally a regulation of commerce, and in effect an exercise of the power of laying duties on imposts, and its exercise by the States is entirely at war with the spirit of the Constitution, and would render vain and nugatory the power granted to Congress in relation to these subjects. Can any power more destructive to the union and harmony of the States be exercised than that of imposing discriminating taxes or duties on imports from other States? Whatever may be the motive for such

taxes, they cannot fail to beget irritation and to lead to retaliation; and it is not difficult to foresee that an indulgence in such a course of legislation must inflame and produce a state of feeling that would seek its gratification in any measures regardless of the consequences.' "

The principle applied in the foregoing cases was also given effect in *Minnesota* v. *Barber*, 136 U. S. 313; *Brimmer* v. *Rebman*, 138 U. S. 78, and *Voight* v. *Wright*, 141 U. S. 62, and so-called inspection laws of various States were held to be repugnant to the commerce clause of the Constitution because of their discriminating character. In *New York* v. *Roberts*, 171 U. S. 658, while the tax there considered, imposed by New York upon a corporation of another State, was sustained as a valid tax upon the franchise of doing business as a corporation in New York, the court reaffirmed the authority of its former decisions declaring the invalidity of all taxes of a discriminating character levied by a State upon the products of other States.

In this connection we excerpt from the opinion in *Philadelphia Steamship Co.* v. *Pennsylvania*, 122 U. S. 326, statements which directly relate to the subject in hand and which conclusively demonstrate the unsoundness of the proposition which the court below upheld, that is, that the commerce clause of the Constitution does not protect property brought from another State from being discriminated against after it has arrived and been commingled with the mass of property within the State of its destination. Commenting upon the reasoning of the opinion in *State Tax on Railway Gross Receipts*, 15 Wall. 284, the court said (122 U. S. 341):

"When the latter (imported goods) become mingled with the general mass of property in the State, they are not followed and singled out for taxation as imported goods, and by reason of their being imported. If they were, the tax would be as unconstitutional as if imposed upon them whilst in the original packages. When mingled with the general mass of property in the State they are taxed in the same manner as other prop-

erty possessed by its citizens, without discrimination or partiality. We held in *Welton* v. *Missouri*, 91 U. S. 275, that goods brought into a State for sale, though they thereby become a part of the mass of its property, cannot be taxed by reason of their being introduced into the State or because they are the products of another State. To tax them as such was expressly held to be unconstitutional. The tax in the present case is laid upon the gross receipts for transportation as such. Those receipts are followed and caused to be accounted for by the company, dollar for dollar. It is those specific receipts, or the amount thereof (which is the same thing), for which the company is called upon to pay the tax. They are taxed not only because they are money, or its value, but because they were received for transportation. No doubt a ship-owner, like any other citizen, may be personally taxed for the amount of his property or estate, without regard to the source from which it was derived, whether from commerce or banking, or any other employment. But that is an entirely different thing from laying a special tax upon his receipts in a particular employment. If such a tax is laid, and the receipts taxed are those derived from transporting goods and passengers in the way of interstate or foreign commerce, no matter when the tax is exacted, whether at the time of realizing the receipts or at the end of every six months or a year, it is an exaction aimed at the commerce itself, and is a burden upon it and seriously affects it."

As there can be no doubt within the principles so clearly settled by the decided cases, to which we have referred, that the disputed tax, which the court below sustained, was a direct burden upon interstate commerce since the law of Tennessee in terms discriminated against property the product of the soil of other States brought into the State of Tennessee by exempting like property when produced from the soil of Tennessee, it follows that the court below erred in deciding the tax to be valid, without reference to the reasoning indulged in by it concerning the application of the equal protection clause of the

Fourteenth Amendment. The judgment below must therefore be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.